

MONTANA LEGISLATIVE HISTORY

Chapter 272 19 87

Bill H \_\_\_\_\_ S 247

Original bill & history ✓ C

H. Committee on Bus. + Lab. ✓

Hearing Date(s) 3/12 ✓ C

\_\_\_\_\_ C

\_\_\_\_\_ C

\_\_\_\_\_ C

Date Out \_\_\_\_\_ C

S. Committee on Bus. + Ind.

Hearing Date(s) 2/11 ✓ C

\_\_\_\_\_ C

\_\_\_\_\_ C

\_\_\_\_\_ C

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Did this bill originate in an interim committee? \_\_\_\_ Yes X No

Committee \_\_\_\_\_

Report \_\_\_\_\_

# SENATE FINAL STATUS

4/10 SIGNED BY SPEAKER

4/10 TRANSMITTED TO GOVERNOR

4/15 SIGNED BY GOVERNOR

CHAPTER NUMBER 477 EFFECTIVE DATE: 6/30/87

SB 247 INTRODUCED BY MEYER, BRANDEWIE, MILLER  
GENERALLY REVISE SECURITY LAWS  
BY REQUEST OF STATE AUDITOR AND SECURITIES  
COMMISSIONER

1/29 INTRODUCED  
1/29 FISCAL NOTE REQUESTED  
1/29 REFERRED TO BUSINESS & INDUSTRY  
2/10 FISCAL NOTE RECEIVED  
2/11 HEARING  
2/12 COMMITTEE REPORT--BILL PASSED AS AMENDED  
2/16 2ND READING PASSED 50 0  
2/18 3RD READING PASSED 50 0

TRANSMITTED TO HOUSE  
2/23 REFERRED TO BUSINESS & LABOR  
3/12 HEARING  
3/12 COMMITTEE REPORT--BILL CONCURRED AS AMENDED  
3/14 2ND READING CONCURRED 88 7  
3/16 3RD READING CONCURRED 94 3

RETURNED TO SENATE WITH AMENDMENTS  
3/19 2ND READING AMENDMENTS CONCURRED 50 0  
3/20 3RD READING AMENDMENTS CONCURRED 49 0  
3/24 SIGNED BY PRESIDENT  
3/25 SIGNED BY SPEAKER

3/25 TRANSMITTED TO GOVERNOR  
3/29 SIGNED BY GOVERNOR  
CHAPTER NUMBER 272 EFFECTIVE DATE: 3/29/87

SB 248 INTRODUCED BY MEYER, BROWN, J., COHEN  
REQUIRE INSURERS TO OFFER COVERAGE OF ROUTINE  
PHYSICAL EXAMS FOR GROUPS  
BY REQUEST OF STATE AUDITOR

1/29 INTRODUCED  
1/29 REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY  
2/09 HEARING  
2/17 STATEMENT OF INTENT ADOPTED  
2/17 COMMITTEE REPORT--BILL PASSED AS AMENDED  
2/19 REREFERRED TO PUBLIC HEALTH, WELFARE & SAFETY  
DIED IN COMMITTEE

SB 249 INTRODUCED BY BLAYLOCK  
EXTEND TERMINATION OF GOVERNMENTAL TORT LIABILITY  
LIMITS

1/29 INTRODUCED  
1/29 REFERRED TO JUDICIARY  
1/29 FISCAL NOTE REQUESTED  
2/05 FISCAL NOTE RECEIVED  
2/10 HEARING  
2/13 COMMITTEE REPORT--BILL PASSED AS AMENDED  
2/17 2ND READING PASSED 49  
2/19 3RD READING PASSED 47

TRANSMITTED TO HOUSE

SENATE BILL NO. 247

INTRODUCED BY MEYER, BRANDEWIE, MILLER

BY REQUEST OF THE STATE AUDITOR AND  
SECURITIES COMMISSIONER

IN THE SENATE

|                   |                                                                 |
|-------------------|-----------------------------------------------------------------|
| JANUARY 29, 1987  | INTRODUCED AND REFERRED TO COMMITTEE<br>ON BUSINESS & INDUSTRY. |
| FEBRUARY 12, 1987 | COMMITTEE RECOMMEND BILL<br>DO PASS AS AMENDED. REPORT ADOPTED. |
| FEBRUARY 13, 1987 | PRINTING REPORT.                                                |
| FEBRUARY 16, 1987 | SECOND READING, DO PASS.                                        |
| FEBRUARY 17, 1987 | ENGROSSING REPORT.                                              |
| FEBRUARY 18, 1987 | THIRD READING, PASSED.<br>AYES, 50; NOES, 0.                    |
|                   | TRANSMITTED TO HOUSE.                                           |

IN THE HOUSE

|                   |                                                                            |
|-------------------|----------------------------------------------------------------------------|
| FEBRUARY 23, 1987 | INTRODUCED AND REFERRED TO COMMITTEE<br>ON BUSINESS & LABOR.               |
| MARCH 12, 1987    | COMMITTEE RECOMMEND BILL BE<br>CONCURRED IN AS AMENDED. REPORT<br>ADOPTED. |
| MARCH 14, 1987    | SECOND READING, CONCURRED IN.                                              |
| MARCH 16, 1987    | THIRD READING, CONCURRED IN.<br>AYES, 94; NOES, 3.                         |
|                   | RETURNED TO SENATE WITH AMENDMENTS.                                        |

IN THE SENATE

MARCH 19, 1987

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

MARCH 20, 1987

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

1 *Senate* BILL NO. *247*  
 2 INTRODUCED BY *Meyer*  
 3 *Miller* BY REQUEST OF THE STATE AUDITOR AND  
 4 SECURITIES COMMISSIONER

5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 7 LAWS RELATING TO SECURITIES; AMENDING SECTIONS 30-10-103  
 8 THROUGH 30-10-105, 30-10-201, 30-10-204, 30-10-206,  
 9 30-10-207, 30-10-209, 30-10-301, 30-10-304, 30-10-307, AND  
 10 90-8-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

11  
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 30-10-103, MCA, is amended to read:

14 "30-10-103. Definitions. When used in parts 1 through  
 15 3 of this chapter, unless the context requires otherwise,  
 16 the following definitions apply:

17 (1) "Commissioner" means securities commissioner of  
 18 this state.

19 (2) "Salesman" means any individual other than a  
 20 broker-dealer who represents a broker-dealer or issuer in  
 21 effecting or attempting to effect sales of securities. A  
 22 partner, officer, or director of a broker-dealer or issuer  
 23 is a salesman only if he otherwise comes within this  
 24 definition. "Salesman" does not include an individual who  
 25 represents an issuer in:

1 (a) effecting a transaction in a security exempted by  
 2 subsections (1), (2), (3), (8), (9), (10), or (11), ~~or--(12)~~  
 3 of 30-10-104;

4 (b) effecting transactions exempted by 30-10-105; or

5 (c) effecting transactions with existing employees,  
 6 partners, or directors of the issuer if no commission or  
 7 other remuneration is paid or given directly or indirectly  
 8 for soliciting any person in this state.

9 (3) "Broker-dealer" means any person engaged in the  
 10 business of effecting transactions in securities for the  
 11 account of others or for his own account. "Broker-dealer"  
 12 does not include:

13 (a) a salesman, issuer, bank, savings institution,  
 14 trust company, or insurance company; or

15 (b) a person who has no place of business in this  
 16 state if he effects transactions in this state exclusively  
 17 with or through the issuers of the securities involved in  
 18 the transactions, other broker-dealers, or banks, savings  
 19 institutions, trust companies, insurance companies,  
 20 investment companies as defined in the Investment Company  
 21 Act of 1940, pension or profit-sharing trusts, or other  
 22 financial institutions or institutional buyers, whether  
 23 acting for themselves or as trustee.

24 (4) "Registered broker-dealer" means a broker-dealer  
 25 registered pursuant to 30-10-201.

(5) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(6) (a) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (6)(a) to others for compensation, as part of a business; or

(ii) represents himself as providing the investment advisory services described in subsection (6)(a) to others for compensation.

(c) "Investment adviser" does not include:

(a)(i) a bank, savings institution, trust company, or insurance company;

(b)(ii) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(c)(iii) a broker-dealer;

(d)(iv) a publisher of any bona-fide newspaper, news column, newsletter, news magazine, or business or financial publication of--general--regular--and-paid-circulation or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(e)(v) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1); or

(f)--a-person-who-has-no--place--of--business--in--this state-if-his-only-clients-in-this-state-are-other-investment advisers--broker-dealers--banks--savings-institutions--trust companies--insurance--companies--investment--companies--as defined-in-the-Investment-Company-Act-of--1940--pension--or profit-sharing--trusts--or--other-financial-institutions-or institutional-buyers--whether-acting-for--themselves--or--as trustees--or

(g)(vi) such other persons not within the intent of this subsection (5) (6) as the commissioner may by rule or order designate.

(7) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated

1 investment trust not having a board of directors (or persons  
2 performing similar functions) or of the fixed, restricted  
3 management, or unit type, the term "issuer" means the person  
4 or persons performing the acts and assuming the duties of  
5 depositor or manager pursuant to the provisions of the trust  
6 or other agreement or instrument under which the security is  
7 issued.

8 (8) "Nonissuer" means not directly or indirectly for  
9 the benefit of the issuer.

10 (9) "Person", for the purpose of parts 1 through 3 of  
11 this chapter, means an individual, a corporation, a  
12 partnership, an association, a joint-stock company, a trust  
13 where the interests of the beneficiaries are evidenced by a  
14 security, an unincorporated organization, a government, or a  
15 political subdivision of a government.

16 (10) (a) "Sale" or "sell" includes every contract of  
17 sale of, contract to sell, or disposition of a security or  
18 interest in a security for value.

19 (b) "Offer" or "offer to sell" includes every attempt  
20 or offer to dispose of or solicitation of an offer to buy a  
21 security or interest in a security for value.

22 (c) Any security given or delivered with or as a bonus  
23 on account of any purchase of securities or any other thing  
24 is considered to constitute part of the subject of the  
25 purchase and to have been offered and sold for value. A

1 purported gift of assessable stock is considered to involve  
2 an offer and sale. Every sale or offer of a warrant or right  
3 to purchase or subscribe to another security of the same or  
4 another issuer, as well as every sale or offer of a security  
5 which gives the holder a present or future right or  
6 privilege to convert into another security of the same or  
7 another issuer, is considered to include an offer of the  
8 other security.

9 (11) "Securities Act of 1933", "Securities Exchange Act  
10 of 1934", "Public Utility Holding Company Act of 1935",  
11 "Investment Advisors Act of 1940", and "Investment Company  
12 Act of 1940" mean the federal statutes of those names as  
13 amended before or after July 1, 1961.

14 (12) "Security" means any note; stock; treasury stock;  
15 bond; debenture; evidence of indebtedness; certificate of  
16 interest or participation in any profit-sharing agreement;  
17 collateral-trust certificate; preorganization certificate or  
18 subscription; transferable shares; investment contract;  
19 voting-trust certificate; certificate of deposit for a  
20 security; certificate of interest or participation in an  
21 oil, gas, or mining title or lease or in payments out of  
22 production under such a title or lease; or, in general, any  
23 interest or instrument commonly known as a security or any  
24 certificate of interest or participation in, temporary or  
25 interim certificate for, receipt for, guarantee of, or

warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period.

(13) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(14) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer".

Section 2. Section 30-10-104, MCA, is amended to read:

"30-10-104. Exempt securities. Sections 30-10-202 through 30-10-207 do not apply to any of the following securities:

(1) any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; provided, however, 30-10-202 through 30-10-207 apply to a security issued by any of the foregoing that is payable solely from payments to be received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise,

unless such enterprise or any security of which it is the issuer is within any of the exemptions enumerated in subsections (2) through ~~(9)~~ (13) of this section;

(2) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of or guaranteed by any bank organized under the laws of the United States or any bank, savings institution, or trust company organized and supervised under the laws of any state;

(4) any security issued by and representing an interest in or a debt of or guaranteed by any federal savings and loan association or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

~~(5)---any---insurance---or---endowment---policy---or---annuity contract---or---optional---annuity---contract---issued---by---a corporation---subject---to---the---supervision---of---the---insurance commissioner;~~

~~(6)~~ (5) any security issued or guaranteed by any



1 federal credit union or any credit union, industrial loan  
2 association, or similar association organized and supervised  
3 under the laws of this state;

4 ~~(7)~~(6) any security issued or guaranteed by any  
5 railroad, other common carrier, public utility, or holding  
6 company which is:

7 (a) subject to the jurisdiction of the interstate  
8 commerce commission;

9 (b) a registered holding company under the Public  
10 Utility Holding Company Act of 1935 or a subsidiary of such  
11 a company within the meaning of that act;

12 (c) regulated in respect of its rates and charges by a  
13 governmental authority of the United States or any state or  
14 municipality; or

15 (d) regulated in respect to the issuance or guarantee  
16 of the security by a governmental authority of the United  
17 States, any state, Canada, or any Canadian province; also  
18 equipment trust certificates in respect to equipment  
19 conditionally sold or leased to a railroad or public utility  
20 if other securities issued by such railroad or public  
21 utility would be exempt under this subsection;

22 ~~(8)~~(7) any security that meets all of the following  
23 conditions:

24 (a) if the issuer is not organized under the laws of  
25 the United States or a state, it has appointed a duly

1 authorized agent in the United States for service of process  
2 and has set forth the name and address of such agent in its  
3 prospectus;

4 (b) a class of the issuer's securities is required to  
5 be and is registered under section 12 of the Securities  
6 Exchange Act of 1934 and has been so registered for the 3  
7 years immediately preceding the offering date;

8 (c) neither the issuer nor a significant subsidiary  
9 has had a material default during the last 7 years (or the  
10 issuer's existence if less than 7 years) in the payment of:

11 (i) principal, interest, dividend, or sinking fund  
12 installment on preferred stock or indebtedness for borrowed  
13 money; or

14 (ii) rentals under leases with terms of 3 years or  
15 more;

16 (d) the issuer has had consolidated net income (before  
17 extraordinary items and the cumulative effect of accounting  
18 changes) of at least \$1 million in 4 of its last 5 fiscal  
19 years, including its last fiscal year; and if the offering  
20 is of interest-bearing securities, has had for its last  
21 fiscal year such net income, but before deduction for income  
22 taxes and depreciation, of at least 1 1/2 times the issuer's  
23 annual interest expense, giving effect to the proposed  
24 offering and the intended use of the proceeds. "Last fiscal  
25 year" as used in this subsection ~~(8)~~(7)(d), means the

1 most recent year for which audited financial statements are  
2 available, provided that such statements cover a fiscal  
3 period ended not more than 15 months from the commencement  
4 of the offering.

5 (e) if the offering is of stock or shares, other than  
6 preferred stock or shares, such securities have voting  
7 rights and such rights include the right to have at least as  
8 many votes per share and the right to vote on at least as  
9 many general corporate decisions as each of the issuer's  
10 outstanding classes of stock or shares, except as otherwise  
11 required by law;

12 (f) if the offering is of stock or shares, other than  
13 preferred stock or shares, such securities are owned  
14 beneficially or of record on any date within 6 months prior  
15 to the commencement of the offering by at least 1,200  
16 persons and on such date there are at least 750,000 such  
17 shares outstanding with an aggregate market value, based on  
18 the average bid price for that day, of at least \$3,750,000.  
19 In connection with the determination of the number of  
20 persons who are beneficial owners of the stock or shares of  
21 an issuer, the issuer or broker-dealer may rely in good  
22 faith for the purposes of this section upon written  
23 information furnished by the record owners.

24 ~~(9)~~(8) any security issued by any person organized and  
25 operated not for private profit but exclusively for

1 religious, educational, benevolent, charitable, fraternal,  
2 social, athletic, or reformatory purposes if the issuer pays  
3 a fee of \$50 and files with the commissioner 20 days prior  
4 to the offering a written notice specifying the terms of the  
5 offer and the commissioner does not disallow the exemption  
6 in writing within such 20-day period;

7 ~~(10)~~(9) any commercial paper which arises out of a  
8 current transaction or the proceeds of which have been or  
9 are to be used for current transaction and which evidences  
10 an obligation to pay cash within 9 months of the date of  
11 issuance, exclusive of days of grace, or any renewal of such  
12 paper which is likewise limited or any guarantee of such  
13 paper or of any such renewal, when such commercial paper is  
14 sold to the banks or insurance companies;

15 ~~(11)~~(10) any investment contract issued in connection  
16 with an employee's stock purchase, savings, pension,  
17 profit-sharing, or similar benefit plan;

18 ~~(12)~~(11) any security for which the commissioner  
19 determines by order that an exemption would better serve the  
20 purposes of 30-10-102 than would registration. The fee for  
21 this exemption must be as prescribed in 30-10-209(4).

22 ~~(13)~~(12) any security listed or approved for listing  
23 upon notice of issuance on the New York stock exchange, the  
24 American stock exchange, the Pacific stock exchange, the  
25 Midwest stock exchange, or any other stock exchange

1 registered with the federal securities and exchange  
 2 commission and approved by the commissioner; any other  
 3 security of the same issuer that is of senior or  
 4 substantially equal rank; any security called for by  
 5 subscription rights or warrants so listed or approved; or  
 6 any warrant or right to purchase or subscribe to any of the  
 7 foregoing;

8 ~~(14)~~(13) any national market system security listed or  
 9 approved for listing upon notice of issuance on the national  
 10 association of securities dealers automated quotation system  
 11 or any other national quotation system approved by the  
 12 commissioner; any other security of the same issuer that is  
 13 of senior or substantially equal rank; any security called  
 14 for by subscription rights or warrants so listed or  
 15 approved; or any warrant or right to purchase or subscribe  
 16 to any of the securities listed in this subsection."

17 Section 3. Section 30-10-105, MCA, is amended to read:

18 "30-10-105. Exempt transactions. Except as in this  
 19 section expressly provided, 30-10-201 through 30-10-207  
 20 shall not apply to any of the following transactions:

21 (1) any nonissuer isolated transaction, whether  
 22 effected through a broker-dealer or not; A transaction is  
 23 presumed to be isolated if it is one of not more than three  
 24 transactions during the prior 12-month period.

25 (2) (a) any nonissuer distribution of an outstanding

1 security by a broker-dealer registered pursuant to 30-10-201  
 2 if:

3 (i) quotations for the securities to be offered or  
 4 sold (or the securities issuable upon exercise of any  
 5 warrant or right to purchase or subscribe to such  
 6 securities) are reported by the automated quotations system  
 7 operated by the national association of securities dealers,  
 8 inc., (NASDAQ) or by any other quotation system approved by  
 9 the commissioner by rule; or

10 (ii) the security has a fixed maturity or a fixed  
 11 interest or dividend provision and there has been no default  
 12 during the current fiscal year or within the 3 preceding  
 13 fiscal years, or during the existence of the issuer and any  
 14 predecessors if less than 3 years, in the payment of  
 15 principal, interest, or dividends on the security.

16 (b) The commissioner may by order deny or revoke the  
 17 exemption specified in subsection (2)(a) with respect to a  
 18 specific security. Upon the entry of such an order, the  
 19 commissioner shall promptly notify all registered  
 20 broker-dealers that it has been entered and of the reasons  
 21 therefor and that within 15 days of the receipt of a written  
 22 request the matter will be set down for hearing. If no  
 23 hearing is requested and none is ordered by the  
 24 commissioner, the order will remain in effect until it is  
 25 modified or vacated by the commissioner. If a hearing is

1 requested or ordered, the commissioner, after notice of and  
2 opportunity for hearing to all interested persons, may  
3 modify or vacate the order or extend it until final  
4 determination. No order under this subsection may operate  
5 retroactively. No person may be considered to have violated  
6 parts 1 through 3 of this chapter by reason of any offer or  
7 sale effected after the entry of an order under this  
8 subsection if he sustains the burden of proof that he did  
9 not know and in the exercise of reasonable care could not  
10 have known of the order.

11 (3) any nonissuer transaction effected by or through a  
12 registered broker-dealer pursuant to an unsolicited order or  
13 offer to buy, but the commissioner may require that the  
14 customer acknowledge upon a specified form that the sale was  
15 unsolicited and that a signed copy of each form be preserved  
16 by the broker-dealer for a specified period;

17 (4) any transaction between the issuer or other person  
18 on whose behalf the offering is made and an underwriter or  
19 among underwriters;

20 (5) any transaction by an executor, administrator,  
21 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
22 or conservator in the performance of his official duties as  
23 such;

24 (6) any transaction executed by a bona fide pledgee  
25 without any purpose of evading parts 1 through 3 of this

1 chapter;

2 (7) any offer or sale to a bank, savings institution,  
3 trust company, insurance company, investment company as  
4 defined in the Investment Company Act of 1940, pension or  
5 profit-sharing trust, or other financial institution or  
6 institutional buyer, or to a broker-dealer, whether the  
7 purchaser is acting for itself or in some fiduciary  
8 capacity;

9 (8) (a) any transaction pursuant to an offer made in  
10 this state directed by the offeror to not more than 10  
11 persons (other than those designated in subsection (7))  
12 during any period of 12 consecutive months, if:

13 (i) the seller reasonably believes that all the buyers  
14 are purchasing for investment; and

15 (ii) no commission or other remuneration is paid or  
16 given directly or indirectly for soliciting any prospective  
17 buyer; provided, however, that a commission may be paid to a  
18 registered broker-dealer if the securities involved are  
19 registered with the United States securities and exchange  
20 commission under the federal Securities Act of 1933, as  
21 amended.

22 (b) For the purpose of the exemption provided for in  
23 subsection (8)(a), an offer to sell is made in this state,  
24 whether or not the offeror or any of the offerees is then  
25 present in this state, if the offer either originates from

1 this state or is directed by the offeror to this state and  
2 received at the place to which it is directed (or at any  
3 post office in this state in the case of a mailed offer).

4 (9) any offer or sale of a preorganization certificate  
5 or subscription if:

6 (a) no commission or other remuneration is paid or  
7 given directly or indirectly for soliciting any prospective  
8 subscriber;

9 (b) the number of subscribers does not exceed 10; and

10 (c) no payment is made by any subscriber;

11 (10) any transaction pursuant to an offer to existing  
12 security holders of the issuer, including persons who at the  
13 time of the transaction are holders of convertible  
14 securities, nontransferable warrants, or transferable  
15 warrants exercisable within not more than 90 days of their  
16 issuance, if:

17 (a) no commission or other remuneration (other than a  
18 standby commission) is paid or given directly or indirectly  
19 for soliciting any security holder in this state; or

20 (b) the issuer first files a notice specifying the  
21 terms of the offer and the commissioner does not by order  
22 disallow either (a) or (b) of this subsection;

23 (11) any offer (but not a sale) of a security for which  
24 registration statements have been filed under both parts 1  
25 through 3 of this chapter and the Securities Act of 1933 if

1 no stop-order-or refusal, denial, suspension, or revocation  
2 order is in effect and no public proceeding or examination  
3 looking toward such an order is pending under either law;

4 (12) any offer (but not a sale) of a security for which  
5 a registration statement has been filed under parts 1  
6 through 3 of this chapter and the commissioner in his  
7 discretion does not disallow the offer in writing within 10  
8 days of such filing;

9 (13) the issuance of any stock dividend, whether the  
10 corporation distributing the dividend is the issuer of the  
11 stock or not, if nothing of value is given by stockholders  
12 for the distribution other than the surrender of a right to  
13 a cash dividend where the stockholder can elect to take a  
14 dividend in cash or stock;

15 (14) any transaction incident to a right of conversion  
16 or a statutory or judicially approved reclassification,  
17 recapitalization, reorganization, quasi-reorganization,  
18 stock split, reverse stock split, merger, consolidation, or  
19 sale of assets;

20 (15) any transaction in compliance with such rules as  
21 the commissioner in his discretion may adopt to serve the  
22 purposes of 30-10-102; or. The commissioner may in his  
23 discretion require that 30-10-201 through 30-10-207 apply to  
24 any or all transactional exemptions adopted by rule.

25 (16) any transaction ~~pursuant--to-the-Montana-Capital~~

~~Company Act, Title 90, chapter 8, provided that a Montana capital company must by a certified Montana capital company as defined in 90-8-104, provided that such company first file files all disclosure documents, along with a consent to service of process, with the state securities commissioner. The commissioner may not charge a fee for the filing or deposit."~~

Section 4. Section 30-10-201, MCA, is amended to read:

"30-10-201. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under 30-10-105, unless he is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesman to represent him in this state, except in transactions exempt under 30-10-105, unless the salesman is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business in this state as an investment adviser unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter; or

(c) his only clients in this state are:

(i) investment companies, as defined in the Investment Company Act of 1940, or insurance companies;

(ii) other investment advisers;

(iii) broker-dealers;

(iv) banks;

(v) trust companies;

(vi) savings and loan associations;

(vii) employee benefit plans with assets of not less than \$1 million;

(viii) governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control; or

(ix) other institutional investors as are designated by rule or order of the commissioner.

(4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser may apply for registration by filing an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. ~~Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner~~

~~may, upon request and for good cause shown by an applicant, waive the residency requirement. Payment of the waiver fee shall be as prescribed in 38-10-209.~~ A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(5) The application shall contain whatever information the commissioner requires. No registration application of a broker-dealer, salesman, investment adviser, or investment adviser representative may be withdrawn before the commissioner approves or denies such registration, without the express written consent of the commissioner.

(6) When the registration requirements are complied with met, the commissioner shall ~~approve the registration~~ make the registration effective. No effective registration

of a broker-dealer, salesman, investment adviser, or investment adviser representative may be withdrawn without the express written consent of the commissioner.

(7) Registration of a broker-dealer, salesman, or investment adviser shall be effective until December 31 following such registration or such other time as the commissioner may by rule adopt and may be renewed. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(8) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing, prior to the expiration thereof, an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, or investment adviser filed by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer who is not a member of NASD, inc., by filing a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an

1 application for registration of a successor, to become  
2 effective upon approval of the commissioner.

3 (9) Every registered broker-dealer and investment  
4 adviser shall make and keep such accounts and other records,  
5 except with respect to securities exempt under 30-10-104(1),  
6 as may be prescribed by the commissioner. All records so  
7 required shall be preserved for 3 years unless the  
8 commissioner prescribes otherwise for particular types of  
9 records. All the records of a registered broker-dealer or  
10 investment adviser are subject at any time or from time to  
11 time to such reasonable periodic, special, or other  
12 examinations, within or without this state, by  
13 representatives of the commissioner, as the commissioner  
14 considers necessary or appropriate in the public interest or  
15 for the protection of investors.

16 (10) The commissioner may by order deny, suspend, or  
17 revoke registration of any broker-dealer, salesman, or  
18 investment adviser if he finds that the order is in the  
19 public interest and that the applicant or registrant or, in  
20 the case of a broker-dealer or investment adviser, any  
21 partner, officer, or director:

22 (a) has filed an application for registration under  
23 this section which, as of its effective date or as of any  
24 date after filing in the case of an order denying  
25 effectiveness, was incomplete in any material respect or

1 contained any statement which was, in the light of the  
2 circumstances under which it was made, false or misleading  
3 with respect to any material fact;

4 (b) has willfully violated or willfully failed to  
5 comply with any provision of parts 1 through 3 of this  
6 chapter or a predecessor law or any rule or order under  
7 parts 1 through 3 of this chapter or a predecessor law;

8 (c) has been convicted of any misdemeanor involving a  
9 security or any aspect of the securities business or any  
10 felony;

11 (d) is permanently or temporarily enjoined by any  
12 court of competent jurisdiction from engaging in or  
13 continuing any conduct or practice involving any aspect of  
14 the securities business;

15 (e) is the subject of an order of the commissioner  
16 denying, suspending, or revoking registration as a  
17 broker-dealer, salesman, or investment adviser;

18 (f) is the subject of an ~~order entered within the past~~  
19 ~~5 years by the securities administrator of any other state~~  
20 ~~or by the federal securities and exchange commission denying~~  
21 ~~or revoking registration as a broker-dealer, salesman, or~~  
22 ~~investment adviser or the substantial equivalent of those~~  
23 ~~terms as defined in parts 1 through 3 of this chapter or is~~  
24 ~~the subject of an order of the federal securities and~~  
25 ~~exchange commission suspending or expelling him from a~~



1 national--securities---exchange---or---national---securities  
2 association--registered-under-the-Securities-Exchange-Act-of  
3 1934-or-is-the-subject-of-a-United-States-post-office--fraud  
4 order;-but:-

5 (i)--the-commissioner-may-not-institute-a-revocation-or  
6 suspension--proceeding-under-this-subsection-(f)-more-than-1  
7 year-from-the-date-of-the-order-relied-on;-and

8 (ii)-he-may-not-enter-any-order-under--this--subsection  
9 (f)--on-the-basis-of-an-order-unless-that-order-was-based-on  
10 facts-which-would-currently-constitute-a-ground-for-an-order  
11 under-this-section; adjudication or determination, within  
12 the past 5 years, by a securities or commodities agency or  
13 administrator of another state or a court of competent  
14 jurisdiction, that the person has violated the Securities  
15 Act of 1933, the Securities Exchange Act of 1934, the  
16 Investment Advisors Act of 1940, the Investment Company Act  
17 of 1940, or the Commodity Exchange Act or the securities or  
18 commodities law of any other state;

19 (g) has engaged in dishonest or unethical practices in  
20 the securities business;

21 (h) is insolvent, either in the sense that his  
22 liabilities exceed his assets or in the sense that he cannot  
23 meet his obligations as they mature, but the commissioner  
24 may not enter an order against a broker-dealer or investment  
25 adviser under this subsection (h) without a finding of

1 insolvency as to the broker-dealer or investment adviser;

2 (i) has not complied with a condition imposed by the  
3 commissioner under this section or is not qualified on the  
4 basis of such factors as training, experience, or knowledge  
5 of the securities business; or

6 (j) has failed to pay the proper filing fee, but the  
7 commissioner may enter only a denial order under this  
8 subsection (j), and he shall vacate any such order when the  
9 deficiency has been corrected; or

10 (k) has failed to reasonably supervise his salesmen or  
11 employees, if he is a broker-dealer, or his investment  
12 adviser representatives or employees, if he is an investment  
13 adviser, to assure their compliance with this act.

14 (11) The commissioner may not institute a suspension  
15 or revocation proceeding on the basis of a fact or  
16 transaction known to him when registration became effective  
17 unless the proceeding is instituted within 30 days after the  
18 date on which the registration became effective.

19 (12) The commissioner may by order summarily postpone  
20 or suspend registration pending final determination of any  
21 proceeding under this section.

22 (13) Upon the entry of the order under subsection  
23 (10) of this section, the commissioner shall promptly notify  
24 the applicant or registrant, as well as the employer or  
25 prospective employer if the applicant or registrant is a

1 salesman, that it has been entered and of the reasons  
 2 therefor and that if requested by the applicant or  
 3 registrant within 15 days after the receipt of the  
 4 commissioner's notification the matter will be promptly set  
 5 down for hearing. If no hearing is requested within 15 days  
 6 and none is ordered by the commissioner, the order will  
 7 remain in effect until it is modified or vacated by the  
 8 commissioner. If a hearing is requested or ordered, the  
 9 commissioner, after notice of and opportunity for hearing,  
 10 may ~~affirm~~, modify, or vacate the order or extend it until  
 11 final determination.

12 ~~{12}~~(14) If the commissioner finds that any registrant  
 13 or applicant for registration is no longer in existence or  
 14 has ceased to do business as a broker-dealer, investment  
 15 adviser, or salesman or is subject to an adjudication of  
 16 mental incompetence or to the control of a committee,  
 17 conservator, or guardian or cannot be located after  
 18 reasonable search, the commissioner may by order cancel the  
 19 registration or application.

20 ~~{13}~~(15) The commissioner may, after suspending or  
 21 revoking registration of any broker-dealer, salesman, or  
 22 investment adviser under subsection (10), impose a fine not  
 23 to exceed \$5,000 upon such broker-dealer, salesman, or  
 24 investment adviser. The fine is in addition to all other  
 25 penalties imposed by the laws of this state and must be

1 collected by the commissioner in the name of the state of  
 2 Montana and deposited in the general fund. Imposition of  
 3 any fine under this subsection is an order from which an  
 4 appeal may be taken pursuant to 30-10-308. If any  
 5 broker-dealer, salesman, or investment adviser fails to pay  
 6 a fine referred to in this subsection, the amount of the  
 7 fine is a lien upon all of the assets and property of such  
 8 broker-dealer, salesman, or investment adviser in this state  
 9 and may be recovered by suit by the commissioner and  
 10 deposited in the general fund. Failure of a broker-dealer,  
 11 salesman, or investment adviser to pay a fine also  
 12 constitutes a forfeiture of his right to do business in this  
 13 state under parts 1 through 3 of this chapter."

14 Section 5. Section 30-10-204, MCA, is amended to read:  
 15 "30-10-204. Registration by coordination. (1) Any  
 16 security for which a registration statement has been filed  
 17 under the Securities Act of 1933 or any securities for which  
 18 filings have been made pursuant to regulation A or  
 19 regulation E, and amendments thereto, of the general rules  
 20 and regulations of the United States securities and exchange  
 21 commission, adopted pursuant to subsection (b) of section 3  
 22 of said Securities Act of 1933, in connection with the same  
 23 offering, may be registered by coordination. A registration  
 24 statement under this section shall contain the following  
 25 information and be accompanied by the following documents,

1 in addition to payment of the registration fee prescribed in  
2 30-10-209:

3 (a) ~~three---copies~~ one copy of the prospectus or  
4 offering circular and letter of notification filed under the  
5 Securities Act of 1933 or the general rules and regulations  
6 thereunder, together with all amendments thereto;

7 (b) the amount of securities to be offered in this  
8 state;

9 (c) the states in which a registration statement or  
10 similar document in connection with the offering has been or  
11 is expected to be filed;

12 (d) any adverse order, judgment, or decree previously  
13 entered in connection with the offering by any court or the  
14 securities and exchange commission;

15 (e) if the commissioner by rule or otherwise requires,  
16 a copy of the articles of incorporation and bylaws (or their  
17 substantial equivalents) currently in effect, a copy of any  
18 agreements with or among underwriters, a copy of any  
19 indenture or other instrument governing the issuance of the  
20 security to be registered, and a specimen or copy of the  
21 security;

22 (f) if the commissioner requests, any other  
23 information, or copies of any other documents, filed under  
24 the Securities Act of 1933;

25 (g) an undertaking to forward promptly all amendments

1 to the federal registration statement or offering circular  
2 and letter of notification, other than an amendment which  
3 merely delays the effective date;

4 (h) a consent to service of process meeting the  
5 requirements of 30-10-208; and

6 (i) such other information as the Commissioner may  
7 require.

8 (2) A registration statement by coordination under  
9 this section automatically becomes effective at the moment  
10 the federal registration statement or other filing becomes  
11 effective if all the following conditions are satisfied:

12 (a) no stop order is in effect and no proceeding is  
13 pending under 30-10-207;

14 (b) the registration statement has been on file with  
15 the commissioner for at least 10 business days; and

16 (c) a statement of the maximum and minimum proposed  
17 offering prices and the maximum underwriting discounts and  
18 commissions has been on file for 2 business days or such  
19 shorter period as the commissioner permits by rule or  
20 otherwise and the offering is made within those limitations.

21 (3) The registrant shall promptly notify the  
22 commissioner of the date and time when the federal  
23 registration statement or other filings became effective and  
24 the content of the price amendment, if any, and shall  
25 promptly file a posteffective amendment containing the

information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(4) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment referred to in subsection (2) of this section, the commissioner may enter a stop denial order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with subsection (2) of this section, if he promptly notifies the registrant of the issuance of the order. If the registrant proves compliance with the requirements as to notice and posteffective amendment, the stop denial order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in subsections (2)(b) and (2)(c) of this section. If the federal registration statement or other filing becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration

statement or other filing is expected to become effective the commissioner shall promptly advise the registrant whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under 30-10-207; but this advice by the commissioner does not preclude the institution of such a proceeding at any time."

Section 6. Section 30-10-206, MCA, is amended to read:

"30-10-206. General provisions regarding registration of securities. (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under parts 1 through 3 of this chapter or a predecessor law within 5 3 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(2) (a) The commissioner may require as a condition of registration by qualification or coordination:

(i) that any security issued within the past 3 years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and

1 (ii) that the proceeds from the sale of the registered  
2 security in this state be impounded until the issuer  
3 receives a specified amount from the sale of the security  
4 either in this state or elsewhere.

5 (b) The commissioner may determine the conditions of  
6 any escrow or impounding required hereunder, but he may not  
7 reject a depository solely because of location in another  
8 state.

9 (3) When securities are registered by notification,  
10 coordination, or qualification, they may be offered and sold  
11 by the issuer, any other person on whose behalf they are  
12 registered, or by any registered broker-dealer. Every  
13 registration shall remain effective for a period of 1 year  
14 unless it is revoked by the commissioner, terminated upon  
15 request of the registrant with the consent of the  
16 commissioner, or renewed under 30-10-209(1)(b); however,  
17 said registration shall be automatically suspended upon a  
18 stop order or suspension proceedings being instituted by the  
19 securities and exchange commission relative to said  
20 securities and shall continue suspended so long as such  
21 proceedings are pending and until the registration or filing  
22 with the securities and exchange commission is effective.  
23 All outstanding securities of the same class as a currently  
24 registered security are considered to be registered for the  
25 purpose of any nonissuer transaction. A registration

1 statement which has become effective may not be withdrawn  
2 for 1 year from its effective date if any securities of the  
3 same class are outstanding.

4 (4) The commissioner may require the person who filed  
5 the registration statement to file reports to keep  
6 reasonably current the information contained in the  
7 registration statement and to disclose the progress of the  
8 offering with respect to registered securities which:

9 (a) are issued by a face-amount certificate company or  
10 a redeemable security issued by an open-end management  
11 company or unit investment trust as those terms are defined  
12 in the Investment Company Act of 1940; or

13 (b) are being offered and sold directly by or for the  
14 account of the issuer.

15 (5) No securities registration statement may be  
16 withdrawn, whether or not such statement has become  
17 effective, without the express written consent of the  
18 commissioner."

19 Section 7. Section 30-10-207, MCA, is amended to read:

20 "30-10-207. Denial, suspension, and revocation of  
21 registration of securities. (1) The commissioner may issue  
22 an order denying effectiveness to, or suspending or revoking  
23 the effectiveness of, any registration statement if he finds  
24 that the order is in the public interest and that:

25 (a) the registration statement, as of its effective

21

1 date or as of any earlier date in the case of an order  
2 denying effectiveness, is incomplete in any material respect  
3 or contains any statement which was, in the light of the  
4 circumstances under which it was made, false or misleading  
5 with respect to any material fact;

6 (b) any provision of parts 1 through 3 of this chapter  
7 or any rule, order, or condition lawfully imposed under  
8 parts 1 through 3 of this chapter has been willfully  
9 violated, in connection with the offering, by:

10 (i) the person filing the registration statement;

11 (ii) the issuer, any partner, officer, or director of  
12 the issuer, any person occupying a similar status or  
13 performing similar functions, or any person directly or  
14 indirectly controlling or controlled by the issuer, but only  
15 if the person filing the registration statement is directly  
16 or indirectly controlled by or acting for the issuer; or

17 (iii) any underwriter;

18 (c) the security registered or sought to be registered  
19 is the subject of a permanent or temporary injunction of any  
20 court of competent jurisdiction entered under any other  
21 federal or state law applicable to the offering, but:

22 (i) the commissioner may not institute a proceeding  
23 against an effective registration statement under this  
24 subsection (c) more than 1 year from the date of the  
25 injunction relied on; and

1 (ii) he may not enter an order under this subsection

2 (c) on the basis of an injunction entered under any other  
3 state law unless that order or injunction was based on facts  
4 which would currently constitute a ground for an order under  
5 this section;

6 (d) the issuer's enterprise or method of business  
7 includes or would include activities which are illegal where  
8 performed;

9 (e) the offering has worked or tended to work a fraud  
10 upon purchasers or would so operate;

11 (f) when a security is sought to be registered by  
12 notification, it is not eligible for such registration;

13 (g) when a security is sought to be registered by  
14 coordination, there has been a failure to comply with the  
15 undertaking required by 30-10-204(1)(g);

16 (h) the applicant or registrant has failed to pay the  
17 proper registration fee, but the commissioner may enter only  
18 a denial order under this subsection, and he shall vacate  
19 any such order when the deficiency has been corrected; or

20 (i) the offering has been or would be made with  
21 unreasonable amounts of underwriters' and sellers'  
22 discounts, commissions, or other compensation, or promoters'  
23 profits or participation, or unreasonable amounts or kinds  
24 of options.

25 (2) The commissioner may not enter a stop suspension

1 or revocation order against an effective registration  
2 statement on the basis of a fact or transaction known to him  
3 when the registration statement became effective.

4 (3) Upon the entry of an order under subsection (1) of  
5 this section, the commissioner shall promptly notify the  
6 issuer of the securities and the applicant or registrant  
7 that an order has been entered and of the reasons therefor  
8 and that, if requested by the issuer or registrant within 15  
9 days after the receipt of the commissioner's notification,  
10 the matter will be set promptly down for hearing. If no  
11 hearing is requested within 15 days and none is ordered by  
12 the commissioner, the order will remain in effect until it  
13 is modified or vacated by the commissioner. If a hearing is  
14 requested or ordered, the commissioner, after notice of and  
15 opportunity for hearing, may affirm, modify, or vacate the  
16 order."

17 Section 8. Section 30-10-209, MCA, is amended to read:

18 "30-10-209. Fees. The following fees shall be paid in  
19 advance under the provisions of parts 1 through 3 of this  
20 chapter:

21 (1) (a) For the registration of securities by  
22 notification, coordination, or qualification, there shall be  
23 paid to the commissioner for the first year of registration  
24 a registration fee of \$200 for the first \$100,000 of initial  
25 issue or portion thereof in this state, based on offering

1 price, plus 1/10 of 1% for any excess over \$100,000, with a  
2 maximum of \$1,000.

3 (b) Each year thereafter, a registration of securities  
4 may be renewed, prior to its termination date, for an  
5 additional year upon consent of the commissioner and payment  
6 of an additional registration fee to be computed at 1/10 of  
7 1% of the aggregate offering price of such securities which  
8 are to be offered in this state during that year, even  
9 though the maximum fee was paid the preceding year. In no  
10 event shall the additional registration fee be less than  
11 \$200 or more than \$1,000. The registration statement for  
12 such securities may be amended to increase the amount of  
13 securities to be offered.

14 (c) If a registrant sells securities in excess of the  
15 aggregate amount registered for sale in this state, the  
16 registrant may file an amendment to the registration  
17 statement to include the excess sales. If the registrant  
18 fails to file an amendment before the expiration date of the  
19 registration order, he shall pay a filing fee for the excess  
20 sales of three times the amount calculated in the manner  
21 specified in subsection (1)(b). Registration of the excess  
22 securities is effective retroactively to the date of the  
23 existing registration.

24 (2) (a) For registration of a broker-dealer or  
25 investment adviser, the fee shall be \$200 for original

1 registration and \$200 for each annual renewal.

2 (b) For registration of a salesman, the fee shall be  
3 \$50 for original registration with each employer, \$50 for  
4 each annual renewal, and \$50 for each transfer.

5 (3) For certified copies of any documents filed with  
6 the commissioner, the fee shall be the cost to the  
7 department.

8 (4) For a request for an exemption under  
9 30-10-105(15), the fee shall be established by the  
10 commissioner by rule. For a request for any other exemption  
11 or an exception to the provisions of parts 1 through 3 of  
12 this chapter, the fee shall be \$50.

13 ~~{5}--For--waiver--of--the--residency--requirement--of~~  
14 ~~30-10-201{4}--the--fee--shall--be--\$50--for--each--original~~  
15 ~~registration--~~

16 {6}{5} All fees are considered fully earned when  
17 received. In the event of overpayment, only those amounts in  
18 excess of \$10 may be refunded.

19 {7}{6} All fees, examination charges, and  
20 miscellaneous charges, except fines or penalties, collected  
21 by the commissioner pursuant to parts 1 through 3 of this  
22 chapter and the rules adopted hereunder must be deposited  
23 into the securities regulatory trust account, pursuant to  
24 30-10-115 through 30-10-118.

25 {8}{7} All fines and penalties collected by the

1 commissioner pursuant to parts 1 through 3 of this chapter  
2 and the rules adopted hereunder must be deposited into the  
3 general fund."

4 Section 9. Section 30-10-301, MCA, is amended to read:

5 "30-10-301. Fraudulent and other prohibited practices.

6 (1) It is unlawful for any person, in connection with the  
7 offer, sale, or purchase of any security, directly or  
8 indirectly, in, into, or from this state, to:

9 (a) employ any device, scheme, or artifice to defraud;

10 (b) make any untrue statement of a material fact or  
11 omit to state a material fact necessary in order to make the  
12 statements made, in the light of the circumstances under  
13 which they are made, not misleading; or

14 (c) engage in any act, practice, or course of business  
15 which operates or would operate as a fraud or deceit upon  
16 any person.

17 (2) (a) It is unlawful for any person who receives,  
18 directly or indirectly, any consideration from another  
19 person primarily for advising the other person as to the  
20 value of securities or their purchase or sale, whether  
21 through the issuance of analysis or reports or otherwise,  
22 to:

23 {a}{i} to employ any device, scheme, or artifice to  
24 defraud the other person; or

25 {b}{ii} to engage in any act, practice, or course of



business which operates or would operate as a fraud or  
deceit upon the other person; or

(iii) without disclosing to the client in writing  
before the completion of the transaction the capacity in  
which he is acting and obtaining the consent of the client  
to the transaction:

(A) acting as principal for his own account, to  
knowingly sell any security to or purchase any security from  
a client; or

(B) acting as agent for a person other than such  
client, to knowingly effect the sale or purchase of any  
security for the account of such client.

(b) The prohibitions of subsection (2)(a)(iii) do not  
apply to any transaction with a customer of a broker-dealer  
if the broker-dealer is not being compensated for rendering  
investment advice in relation to such transaction.

(3) In the solicitation of advisory clients, it is  
unlawful for a person to:

(a) make a false statement of a material fact; or

(b) omit a material fact necessary to make a statement  
not misleading in light of the circumstances under which it  
is made.

(3)(4) Except as permitted by rule or order of the  
commissioner, it is unlawful for any investment adviser to  
enter into, extend, or renew any investment advisory

contract unless it provides in writing that:

(a) the investment adviser shall not be compensated on  
the basis of a share of capital gains upon or capital  
appreciation of the funds or any portion of the funds of the  
client;

(b) no assignment of the contract may be made by the  
investment adviser without the consent of the other party to  
the contract; and

(c) the investment adviser, if a partnership, shall  
notify the other party to the contract of any change in the  
membership of the partnership within a reasonable time after  
the change.

(5) Subsection (4)(a) does not prohibit an investment  
advisory contract which provides for compensation based upon  
the total value of a fund averaged over a definite period or  
as of definite dates or taken as of a definite date.  
"Assignment", as used in subsection (4)(b), includes any  
direct or indirect transfer or hypothecation of an  
investment advisory contract by the assignor or of a  
controlling block of the assignor's outstanding voting  
securities by a security holder of the assignor; but if the  
investment adviser is a partnership, no assignment of an  
investment advisory contract is considered to result from  
the death or withdrawal of a minority of the members of the  
investment adviser having only a minority interest in the

business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(6) It is unlawful for an investment adviser to take or have custody of any securities or funds of any client if:

(a) the commissioner by rule prohibits such custody;  
or

(b) in the absence of rule, the investment adviser fails to notify the commissioner that he has or may have such custody."

Section 10. Section 30-10-304, MCA, is amended to read:

"30-10-304. Investigations and subpoenas. (1) The commissioner in his discretion may:

(a) make such public or private investigations or examinations within or without this state as he deems necessary to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate any provision of parts 1 through 3 of this chapter or any rule or order hereunder or to aid in the enforcement of parts 1 through 3 of this chapter or in the prescribing of rules and forms hereunder;

(b) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner may

determine, as to all the facts and circumstances concerning the matter to be investigated; and

(c) publish information concerning any violation of parts 1 through 3 of this chapter or any rule or order hereunder.

(2) (a) For the purpose of any investigation or proceeding under parts 1 through 3 of this chapter, the commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(b) The commissioner may issue and apply to enforce subpoenas in this state at the request of a securities agency or administrator of another state if the activities constituting an alleged violation for which the information is sought would be a violation of the Securities Act of Montana if the activities had occurred in this state.

(3) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring him to appear before the commissioner or the officer designated by him, there to produce documentary evidence if so ordered or to give

1 evidence touching the matter under investigation or in  
2 question. Any failure to obey the order of the court may be  
3 punished by the court as a contempt of court.

4 (4) No person is excused from attending and testifying  
5 or from producing any document or record before the  
6 commissioner or in obedience to the subpoena of the  
7 commissioner or any officer designated by him, or in any  
8 proceeding instituted by the commissioner, on the ground  
9 that the testimony or evidence (documentary or otherwise)  
10 required of him may tend to incriminate him or subject him  
11 to a penalty or forfeiture; but no compelled testimony or  
12 evidence or any information directly or indirectly derived  
13 from such testimony or evidence may be used against the  
14 witness in any criminal case. Nothing in this section  
15 prohibits the commissioner from granting immunity from  
16 prosecution for or on account of any transaction, matter, or  
17 thing concerning which a witness is compelled to testify if  
18 the commissioner determines, in his sole discretion, that  
19 the ends of justice would be served thereby. Immunity may  
20 not extend to prosecution or punishment for false statements  
21 given pursuant to the subpoena."

22 Section 11. Section 30-10-307, MCA, is amended to  
23 read:

24 "30-10-307. Civil liabilities. (1) Any person who  
25 offers or sells a security in violation of any provisions of

1 30-10-202 through ~~30-10-205~~ or offers or sells a security by  
2 means of fraud or misrepresentation is liable to the person  
3 buying the security from him, who may sue either at law or  
4 in equity to recover the consideration paid for the  
5 security, together with interest at 10% per annum from the  
6 date of payment, costs, and reasonable attorneys' fees, less  
7 the amount of any income received on the security, upon the  
8 tender of the security, or for damages if he no longer owns  
9 the security. Damages are the amount that would be  
10 recoverable upon a tender less:

11 (a) the value of the security when the buyer disposed  
12 of it; and

13 (b) interest at 10% per annum from the date of  
14 disposition.

15 (2) Every person who directly or indirectly controls a  
16 seller liable under subsection (1), every partner, officer,  
17 or director (or person occupying a similar status or  
18 performing similar functions) or employee of such a seller,  
19 and every broker-dealer or salesman who participates or  
20 materially aids in the sale is liable jointly and severally  
21 with and to the same extent as the seller if the nonseller  
22 knew, or in the exercise of reasonable care could have  
23 known, of the existence of the facts by reason of which the  
24 liability is alleged to exist. There shall be contribution  
25 among the several persons so liable.

27

1 (3) Any tender specified in this section may be made  
2 at any time before entry of judgment. A cause of action  
3 under this statute survives the death of any person who  
4 might have been a plaintiff or a defendant. No person may  
5 sue under this section:

6 (a) if the buyer has received a written offer, at a  
7 time when he owned the security, to refund the consideration  
8 paid, together with interest at 10% per annum from the date  
9 of payment, less the amount of any income received on the  
10 security and he failed to accept the offer within 30 days of  
11 its receipt; or

12 (b) if the buyer has received a written offer at a  
13 time when he did not own the security in the amount that  
14 would be recoverable under subsection (1) upon a tender  
15 less:

16 (i) the value of the security when the buyer disposed  
17 of it; and

18 (ii) interest at 10% per annum from the date of  
19 disposition.

20 (4) No person who has made or engaged in the  
21 performance of any contract in violation of any provision of  
22 parts 1 through 3 of this chapter or any rule or order  
23 hereunder or who has acquired any purported right under any  
24 such contract with knowledge of the facts by reason of which  
25 its making or performance was in violation may base any suit

1 on the contract. Any condition, stipulation, or provision  
2 binding any person acquiring any security to waive  
3 compliance with any provision of parts 1 through 3 of this  
4 chapter or any rule or order hereunder is void as against  
5 public policy and in the public interest."

6 Section 12. Section 90-8-304, MCA, is amended to read:

7 "90-8-304. Application of securities law. In lieu of  
8 registration under Title 30, chapter 10, a certified Montana  
9 capital company may file all disclosure documents, along  
10 with a consent to service of process, with the state  
11 securities commissioner. The commissioner may not charge a  
12 fee for such filing or deposit."

13 NEW SECTION. Section 13. Coordination instruction. If  
14 Bill No. [LC 1053] is not passed and approved, section 4  
15 of this act, amending 30-10-201, is amended so that  
16 30-10-201(5) and (6) read as follows:

17 "(5) The application shall contain whatever  
18 information the commissioner requires. No registration  
19 application of a broker-dealer, salesman, or investment  
20 adviser may be withdrawn before the commissioner approves or  
21 denies such registration, without the express written  
22 consent of the commissioner.

23 (6) When the registration requirements are complied  
24 with met, the commissioner shall approve--the--registration--  
25 make the registration effective. No effective registration

1 of a broker-dealer, salesman, or investment adviser may be  
2 withdrawn without the express written consent of the  
3 commissioner."

4 NEW SECTION. Section 14. Extension of authority. Any  
5 existing authority of the securities commissioner to make  
6 rules on the subject of the provisions of this act is  
7 extended to the provisions of this act.

8 NEW SECTION. Section 15. Effective date. This act is  
9 effective on passage and approval.

-End-

CHAIRMAN--SEN. ALLEN C. KOLSTAD  
NORMAL SCHEDULE==> SITE: ROOM 410

DAYS: MON THRU FRI

TIME: 10:00 A.M.

SECRETARY-CAROLYN LINDEN

| --BILL NO--                                                                                           | REFER DATE | HEARING DATE | CONSIDERATION DATES       | COMMITTEE ACTION           | REFERRER TO COMM | DATE OUT |
|-------------------------------------------------------------------------------------------------------|------------|--------------|---------------------------|----------------------------|------------------|----------|
| SB0210                                                                                                | 1/26       | 2/12         | 2/12/87; 2/16/87          | PASS AS AMENDED<br>2/16/87 | BUSINESS & LABOR | 2/16/87  |
| KEATING, THOMAS F. DEFINING PROFESSIONAL COUNSELORS AS HEALTH CARE PROVIDERS                          |            |              |                           |                            |                  |          |
| SB0210                                                                                                | 2/18       | 2/19/87      | 2/19/87                   | PASS AS AMENDED<br>2/19/87 |                  | 2/19/87  |
| KEATING, THOMAS F. DEFINING PROFESSIONAL COUNSELORS AS HEALTH CARE PROVIDERS                          |            |              |                           |                            |                  |          |
| SB0213                                                                                                | 1/24       | 2/12         | 2/12/87                   | PASS AS AMENDED            |                  | 2/12/87  |
| MAZUREK, JOSEPH P. REGULATING THE OFFERING AND SALE OF TIMESHARES                                     |            |              |                           |                            |                  |          |
| SB0218                                                                                                | 1/24       | 2/04         | 2/4/87; 2/6/87            | DO PASS                    |                  | 2/6/87   |
| MEYER, DARRYL REGULATE TRANSFERS OF MEDICARE SUPPLEMENT INSURANCE POLICIES                            |            |              |                           |                            |                  |          |
| SB0222                                                                                                | 1/26       | 2/13         | 2/13/87; 2/20/87; 2/17/87 | PASS AS AMENDED            |                  | 2/20/87  |
| FARRELL, WILLIAM E. ESTABLISH MOTOR CARRIER TRAFFIC BUREAU WITHIN DEPT OF COMMERCE                    |            |              |                           |                            |                  |          |
| SB0237                                                                                                | 1/28       | 2/12         | 2/12/87; 2/16/87          | DO PASS                    |                  | 2/16/87  |
| BOYLAN, PAUL F. EXCLUDE RADIO AND TELEVISION ADVERTISING SALESMEN FROM OVERTIME COMPENSATION          |            |              |                           |                            |                  |          |
| SB0239                                                                                                | 1/28       | 2/05         | 2/5/87; 2/6/87            | ADVERSE REPORT             |                  | 2/6/87   |
| HIRSCH, LES J. MOTOR FUEL SUPPLIER MAY OPERATE RETAIL OUTLET IN ONLY LIMITED CIRCUMSTANCES            |            |              |                           |                            |                  |          |
| SB0244                                                                                                | 1/29       |              |                           |                            | STATE ADMIN.     |          |
| YELLOWTAIL JR, WILLIAM P. PROHIBIT INVESTMENT OF PUBLIC FUNDS IN FIRMS DOING BUSINESS IN SOUTH AFRICA |            |              |                           |                            |                  |          |
| SB0245                                                                                                | 1/29       | 2/05         | 2/5/87; 2/6/87            | PASS AS AMENDED            |                  | 2/6/87   |
| KOLSTAD, ALLEN C. COMPUTATION OF FINANCE CHARGE ON RETAIL CHARGE ACCOUNT AGREEMENT                    |            |              |                           |                            |                  |          |
| SB0247                                                                                                | 1/29       | 2/11         | 2/11/87                   | PASS AS AMENDED            |                  | 2/11/87  |
| MEYER, DARRYL GENERALLY REVISE SECURITY LAWS                                                          |            |              |                           |                            |                  |          |
| SB0250                                                                                                | 1/29       | 2/11         | 2/11/87                   | DO PASS                    |                  | 2/11/87  |
| MCLANE, HARRY H. (DOC) VOLUNTARY DISSOLUTION OF DOMESTIC INSURERS                                     |            |              |                           |                            |                  |          |

MONTANA STATE SENATE  
BUSINESS AND INDUSTRY COMMITTEE

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50TH LEGISLATURE  
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COMMITTEE MEMBERS:

Senator Allen C. Kolstad, Chairman  
Senator Ted Neuman, Vice Chairman  
Senator Paul Boylan  
Senator Delwyn Gage\*  
Senator Tom Hager  
Senator Harry H. McLane  
Senator Darryl Meyer  
Senator Gene Thayer  
Senator Mike Walker  
Senator Cecil Weeding  
Senator Bob Williams

STAFF ATTORNEY:

Mary McCue

COMMITTEE SECRETARY:

Carolyn A. Linden

\*Sen. Gage was unable to attend most of the meetings due to a conflict with other committees. He was replaced by Sen. Hager.

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BOOK:

ONE OF THREE

INCLUSIVE DATES: 1/6/87 THROUGH 2/6/87

MINUTES OF THE MEETING  
BUSINESS & INDUSTRY COMMITTEE  
MONTANA STATE SENATE

February 11, 1987

The eighteenth meeting of the Business and Industry Committee was called to order by Chairman Allen C. Kolstad at 10 a.m. on Wednesday, February 11, 1987, in Room 410 of the Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF SENATE BILL NO. 254: Sen. Mike Walker, Senate District 20, Great Falls, chief sponsor of the bill, stated that the bill will put into statute that which is currently handled by administrative rule. This will provide that the department of criminal justice would not have to change their system over to the securities division when a new governor is elected. This clarifies the role of the securities commissioner.

PROPOSERS: Kim Schulke, Deputy Securities Commissioner, said they are already an executive criminal justice agency pursuant to an executive order and they would like it in statute so they don't have to go to the governor following each election to request this. She also submitted written testimony to which she referred. (EXHIBIT 1)

OPPOSERS: There were no opposers.

DISCUSSION OF SENATE BILL NO. 254: Chairman Kolstad then called for questions from the committee. Chairman Kolstad stated to Sen. Walker that the Senate has had a lot of problems with the police powers for the auditor's office. Sen. Walker pointed out that the bill contains guidelines for an effective protection of individual privacy in collection, storage and dissemination of criminal justice information and that is important.

Ms. Schulke said this bill is important for them to continue with their criminal investigations and keep those records confidential.

There being no further questions, Sen. Walker said they weren't asking for something that wasn't currently in practice; they were trying to set some machinery in the securities division that stabilizes them on an even basis where they would not have to come back and change from one administration to another and this should also prevent future legislation in this area.

DISPOSITION OF SENATE BILL NO. 254: Sen. Williams MOVED SB 254 DO PASS, seconded by Sen. Meyer. The MOTION CARRIED UNANIMOUSLY.



CONSIDERATION OF SENATE BILL NO. 250: Sen. Harry McLane, Senate District 42, Laurel, chief sponsor of the bill, said the bill provides for the voluntary dissolution of domestic insurers and was at the request of the state auditor's office. He said there is no mechanism for this and it was drafted because of a problem the insurance department had in 1986. There was no law stating how voluntary dissolution should be accomplished. One of the concerns was that the company might be permitted to dissolve while still having obligations that were unpaid so it was clear that a law was necessary which would spell out the procedures for dissolution. He pointed out that section 2, line 20, page 1, sets forth the necessary steps requiring advance notice and approval by the shareholders, requiring advance notice and approval by the shareholders and/or policyholders, advance notification to the insurance commissioner and the approval of the dissolution by the commissioner. Further sections of the bill were briefly explained by Sen. McLane.

PROPOSERS: Jim Borchardt, Chief Examiner in the State Auditor's Office, stated that the bill was introduced at his suggestion and reemphasized the testimony that Sen. McLane had presented.

OPPOSERS: There were no opposers.

DISCUSSION OF SENATE BILL NO. 250: Chairman Kolstad asked for questions from the committee.

Sen. Thayer asked Mr. Borchardt how often dissolution occurs and he replied that they are very infrequent and it is simply having the mechanism in place to take care of this in a detailed, outlined way. He said they did not expect to implement it very often.

DISPOSITION OF SENATE BILL NO. 250: Sen. Meyer MOVED SB 250 DO PASS, seconded by Sen. Boylan. The MOTION CARRIED UNANIMOUSLY.

CONSIDERATION OF SENATE BILL NO. 247: Sen. Darryl Meyer, District 17, Great Falls, sponsor, said the bill generally revises the Securities Act of Montana and it would accomplish the goals of the uniformity of the securities regulation as well as minor revisions of many of the provisions of the securities act. He went over the amendments in the bill.

PROPOSERS: Kim Schulke, Deputy Securities Commissioner, submitted proposed amendments to the bill which are attached to the minutes and explained the amendments to the committee. (EXHIBITS 2 and 3)

Bruce McKenzie, Vice President and General Counsel of D.A. Davidson, Great Falls, expressed his appreciation for the commissioner's

office seeking the views of the industry members before introducing the legislation. He pointed out that a broker/dealer is different from an investment advisor in that a broker actually keeps the orders and is deemed an investment advisor and is compensated. He also clarified the consent time saying it is not only consent at the time but can also be given prospectively in those cases where they have what they call a discretionary account; that is, a customer who has granted to them the authority to trade in his account for him. He stated that they support the bill.

OPPONENTS: There were no opponents.

DISCUSSION OF SENATE BILL NO. 247: Chairman Kolstad then called for questions from the committee.

Sen. Boylan wondered if this was being tightened up so he could be prosecuted for giving investment advice to friends. Ms. Schulke replied that he would not because he would not be receiving any compensation for the advice. Sen. Boylan expressed his concern that the law would really work.

Sen. Thayer asked about the amendment regarding the word "stop" (EXHIBIT 2). Ms. Schulke explained why they are reinserting the word. (It had been deleted in error during drafting.)

Sen. Boylan inquired if there would be an increase in FTE's, and Ms. Schulke replied there should be no need for further FTE's. Chairman Kolstad said they assume they would be cumulative and after they receive so many of them they would then be looking at increased FTE's but it would not be this year. Ms. Schulke responded affirmatively.

There being no further questions, Sen. Meyer closed stating that there was a Fiscal Note with the bill and the bill will save the State \$2,600.

DISPOSITION OF SENATE BILL NO. 247: Sen. Weeding MOVED ADOPTION OF THE AMENDMENT, seconded by Sen. Hager. The MOTION CARRIED UNANIMOUSLY. Sen. Weeding MOVED SB 247 DO PASS AS AMENDED, seconded by Sen. Williams. THE MOTION CARRIED UNANIMOUSLY.

CONSIDERATION OF HOUSE BILL NO. 203: Rep. Gary Spaeth, House District 84, chief sponsor, said the bill allows the state auditor the discretion to waive the bond of indemnity for the issuance of the duplicate warrant. Right now they do not have that discretion. He referred to a number of plane accidents in which there were a number of government warrants, primarily income tax refunds. Because they were in excess of \$100 and did not fall under any of the exceptions listed in the bill, the person involved had to obtain a bond.

PROPOSERS: There were none.

ROLL CALL

Business & Industry COMMITTEE  
50th LEGISLATIVE SESSION -- 1987

Date 2/11/87  
Wednesday

| NAME                       | PRESENT | ABSENT | EXCUSED |
|----------------------------|---------|--------|---------|
| ALLEN C. KOLSTAD, CHAIRMAN | ✓       |        |         |
| TED NEUMAN, VICE CHAIRMAN  | ✓       |        |         |
| PAUL BOYLAN                | ✓       |        |         |
| TOM HAGER                  | ✓       |        |         |
| HARRY H. McLANE            | ✓       |        |         |
| DARRYL MEYER               | ✓       |        |         |
| GENE THAYER                | ✓       |        |         |
| MIKE WALKER                | ✓       |        |         |
| CECIL WEEDING              | ✓       |        |         |
| BOB WILLIAMS               | ✓       |        |         |
|                            |         |        |         |
|                            |         |        |         |
|                            |         |        |         |
|                            |         |        |         |
|                            |         |        |         |

Each day attach to minutes.



EXHIBIT NO. 2DATE 2-11-87BILL NO. SB 247Amendment to SB 247 - General Revision of Securities Laws

Section 3 of the bill amends 30-10-105. In subsection (11), on page 18, line 1, "stop" has been deleted. Re-insert "stop".

The deletion of the word "stop" was a drafting error.

Kim Schulke  
Deputy Securities Commissioner  
444-5236

SB 247  
GENERAL REVISION OF SECURITIES LAWS

Requested by State Auditor and Commissioner of Securities,  
Andrea "Andy" Bennett

SECTION BY SECTION REVIEW

Section 1. Amendment to 30-10-103.

In subsection (2)(a), some renumbering has been done to reflect amendments to 30-10-104, which are contained in Section 2 of this bill.

In subsection (6)(b), an addition has been made to the term "investment adviser," to include persons who provide investment advisory services as an integral part of other financially related services or persons who represent that they are providing investment advisory services for compensation.

Subsection (6)(c)(iv) has been amended to reflect the change in the law as set forth in the 1985 U.S. Supreme Court case of Lowe v. Securities and Exchange Commission. That case held that it was a violation of the first amendment right of free speech for the SEC to prohibit the publishing of nonpersonalized investment advice.

Subsection (6)(f) has been deleted. The substance of this section has been moved to Section 4 of this bill, on page 20. As the law currently exists, certain persons who have no place of business in this state, and whose clients are sophisticated investors, are excluded from the definition of investment adviser so that the Securities Act does not apply to them at all. By moving this exclusion from Section 1 to Section 4 of this bill, we are recognizing that these particular persons are in fact investment advisers and the Securities Act does apply to them, but they do not have to register in order to do business here. The anti-fraud provisions of the Securities Act will now apply to those particular investment advisers.

In subsection 11, the "Investment Advisors Act of 1940," has been added to the list of federal statutes to which the Securities Act of Montana refers. The Investment Advisors Act of 1940, is referred to in an amendment contained in Section 4 of this bill.

A new subsection 14 has been added to define the terms "transact", "transact business", and "transaction". These terms are used in the Securities Act, but have not been defined. The lack of a definition has been used against our Department in at least one case where a criminal defendant was charged under 30-10-201, which prohibits a person from transacting business in this state as a broker-dealer or salesman unless they are registered under the Securities Act. We overcame the problem in that case, by researching the history of the Uniform Securities Act. We were able to determine that the term "transact business" was meant to include both the offer and sale of securities. In order to clarify the Securities Act and provide notice to those subject to its provisions, we propose this definition.

Section 2. Amendment to 30-10-104.

Subsection 5 deletes the exemption from registration of any insurance or endowment policy or annuity contracts which is subject to the supervision of the insurance commissioner. The definition of "security" as set forth in 30-10-103(12) states that it does not include these products. Therefore, it is useless to provide an exemption from registration for them in the Securities Act since they aren't securities. When the Uniform Securities Act was adopted in Montana, either one or the other of these provisions should have been adopted, but not both. Taking this exemption out will make it clear that the Securities Act of Montana does not apply to these insurance products. Such products are already regulated by the insurance commissioner.

Section 3. Amendment to 30-10-105.

Subsection 1 provides an exemption from registration for transactions not for the benefit of the issuer of the securities, if that transaction is an "isolated" transaction. The suggested amendment here clarifies when a transaction is deemed to be "isolated." A transaction is presumed to be isolated if it is one of not more than 3 transactions during the prior 12-month period.

In reviewing similar exemptions in other states, the 3 transactions in a 12-month period appears to be standard.

This exemption allows you and I to sell the securities we hold, assuming we are not the issuer of those securities, without the requirement of registration.

Subsection (11) adds "denial suspension or revocation." This section provides an exemption from registration for an offer of a security for which registration statements have been filed under the Securities Act of Montana and the federal Securities Act of 1933, if none of these orders is in effect or pending. The Securities Act of Montana does not define or use "stop" or

"refusal" order; therefore, we have added the terms our act does use: "denial, suspension, or revocation" orders. The federal securities acts use the term "stop" order. This amendment clarifies that any of these orders will invalidate the exemption.

Subsection (15) provides that the commissioner may create additional exemptions by administrative rule. The amendment to this section provides that the commissioner may require registration of the broker-dealer, the salesman, or the securities in particular instances. This gives the commissioner flexibility in balancing the needs of investor protection and the facilitation of capital formation in Montana.

Subsection (16) provides an exemption from registration for transactions by a Montana capital company as defined in the Montana Capital Company Act. This amendment would require that the exemption apply only to those companies which are "certified" capital companies, and not just those that apply to become "certified" companies under the Capital Company Act. A company seeking to be certified as a Montana capital company must make an application to the Montana Economic Development Board. The application must show that the applicant's purpose is to encourage and assist in the creation, development, and expansion of Montana-based businesses and to provide maximum opportunities for the employment of Montanans by making venture capital available to sound small Montana firms.

The reason for this exemption is to encourage companies to form capital in Montana to start and expand businesses. In order to protect investors, however, the Commissioner believes that this exemption should only be available to those companies who have become certified.

I have discussed this amendment with Mr. Bob Pancich of the Montana Economic Development Board, and he approves the amendment.

#### Section 4. Amendment to 30-10-201.

Subsection (3)(c) provides that an investment adviser whose only clients in this state are certain sophisticated investors, need not register here. The amendment to this subsection adds several more types of sophisticated investors to this list. This amendment is made to modernize Montana's securities law to make them uniform with the laws of other states.

Subsection (4) currently provides that all securities salesmen must be legal residents of this state unless they work for brokerage firms governed by the SEC. There is no reason for this requirement, and it might be argued that this requirement results in the denial of equal protection for salesmen who do not work for those firms. A \$50 fee was required to waive the residency requirement. Deletion of the residency requirement will have a small fiscal impact on the revenues of the Securities Department, as noted in the fiscal note attached to the bill.



The amendments to subsections (5) and (6) provide that a registration application cannot be withdrawn from consideration without consent of the commissioner. This amendment is made to prevent a situation that arose a few years ago in our Department. An issuer filed a registration application which was incomplete. Included within the application were financial statements which the commissioner believed grossly overstated the net worth of the general partner of the venture. When the commissioner questioned the statements, the applicant withdrew the application. The commissioner then brought an action alleging the filing of false information. The applicant argued that he could withdraw his application at any time before it was complete, and thereby avoid liability for false information filed with the commissioner. If we hadn't caught the allegedly false information, it could have been used to sell securities in this state, and could have mislead investors. This amendment will require approval of the commissioner before an application is allowed to be withdrawn, thereby giving the commissioner an opportunity to take formal action against an incomplete, but possibly misleading application.

Subsection (10)(f) allows the commissioner to deny, suspend or revoke the registration of a broker-dealer, salesman or investment adviser if such person or firm is subject to an order of the securities commissioner of any other state or by the SEC. The amendment clarifies to which orders the persons or firms are subject, and adds orders based on violations of the Investment Advisors Act of 1940, the Investment Company Act of 1940, and the various commodities laws.

New subsection (10)(k) allows the commissioner to deny, suspend or revoke the registration of a broker-dealer or investment adviser for failure to supervise his salesman or investment adviser representatives. This provision appeared in the Uniform Securities Act, but was not adopted in Montana in 1961 when we adopted most of that uniform act. Most other states, and the SEC have similar provisions. It requires the broker-dealer and the investment adviser to closely monitor the activities of their employees in connection with the offer and sale of securities and the giving of investment advice in Montana.

New subsection (11) states that the commissioner may not bring a suspension or revocation action based on a fact known to the commissioner when the registration became effective unless the proceeding is begun within 30 days after the date on which the registration becomes effective. This provides an applicant with the assurance that, if no action is brought within 30 days after his registration is made effective, the application will not be revoked or suspended based on information known to the commissioner at the time of registration.

New subsection (12) gives the commissioner the authority to summarily postpone or suspend registration pending a final determination of any revocation, denial or suspension action. This summary procedure is allowed by the Montana Administrative Procedure Act, section 2-4-631(3), MCA.

The amendment to subsection (13) allows the commissioner to extend a summary denial, suspension or revocation order until a final order is issued by the hearing examiner, after the applicant has had an opportunity to contest such action.

Section 5. Amendment to 30-10-204.

Section 30-10-204 describes the procedure whereby securities can become registered in Montana by coordination with a federal securities registration. Such applicants, under current law, must submit 3 copies of the prospectus to our office. We routinely throw away 2 of those copies. Therefore, it is ridiculous for the department to ask for 3. The amendment to 30-10-204(1)(a) deletes this requirement.

In 30-10-204(4), "stop" order is replaced by "denial" order, as discussed earlier in this summary. The correct term under Montana law is a denial order; our statutes do not use the term "stop" order.

Section 6. Amendment to 30-10-206.

New subsection (5) requires written consent of the commissioner before a securities application can be withdrawn. This prevents an applicant from filing false information with the commissioner and then withdrawing his application before the commissioner can take action for the filing of such information.

Section 7. Amendment to 30-10-207.

In section 30-10-207(2) "stop" order is replaced by "suspension or revocation" order, again because the Securities Act of Montana does not use or define the term "stop" order.

Section 8. Amendment to 30-10-209.

Subsection (5) is deleted because the residency requirement has been excised from the Securities Act.

Section 9. Amendment to 30-10-301.

Subsection (2) describes fraudulent and other prohibited practices of investment advisers. Current law reads that a person who gets consideration from another primarily for advising the other as to the value of securities, cannot engage in certain practices. The amendment to this section provides that the consideration can be received directly or indirectly, and that the consideration need not be primarily in return for the investment advice.

4

The words "directly or indirectly" are added and the word "primarily" is deleted, to ensure that all persons, including officers, directors, and investment adviser representatives of an investment adviser, who receive compensation from an employer who renders investment advice rather than directly from a client, are subject to this section.

The addition of new subsection (2)(a)(iii) is the equivalent of section 206(3) of the federal Investment Advisers Act of 1940 which requires an adviser and persons associated with the adviser, who act as principal or effect transactions between clients, to disclose in writing the capacity in which the adviser or associated person is acting and obtain the consent of the client to the transactions prior to completion of the transaction. This allows for the disclosure of possible conflicts of interest in the giving of investment advice.

New subsection (2)(b) provides that the disclosures required by (2)(a)(iii) are not required of broker-dealers who are not being compensated for rendering investment advice.

The addition of new subsection (3) is intended to cover fraudulent practices committed in the solicitation of clients rather than in the rendition of advice, which is addressed in subsection (2)(a).

Under current law, 30-10-301(3) provided that it is unlawful for an investment adviser to enter into an investment advisory contract unless certain requirements were met. In order to make this requirement more flexible, the amendment to that subsection, which has become 30-10-301(4), provides that the commissioner may allow contracts without those requirements, by rule or order.

New subsection (6) requires investment advisers who have custody of client's securities or funds, to notify the commissioner. It also allows the commissioner to prohibit such custody by rule. This section is a part of the Uniform Securities Act. Montana did not adopt this part of the Act in 1961. In order to make our statute uniform with those of most other states, we are proposing this amendment.

#### Section 10. Amendment to 30-10-304.

Section (2)(b) is added to provide for the enforcement in Montana, of subpoenas issued by other state securities commissioners. In turn, in those states where similar provisions have been enacted, subpoenas issued by the Montana Securities Commissioner, can be enforced. This provision will expand the reach of the commissioner's subpoenas to out of state companies and persons. Since most of our enforcement actions are against out of state companies, this will facilitate the collection of information for our investigations.

42

Section 11. Amendment to 30-10-307.

Section 30-10-307 provides for private civil actions to be brought for violations of the Securities Act of Montana. This amendment proposes to delete "of any provisions" and "through 30-10-205" in the first sentence of 30-10-307. Section 30-10-202 is the section which defines the violation of the sale of unregistered securities. Sections 30-10-203, -204 and -205 describe the different ways in which securities may become registered in Montana. These sections do not define violations, and therefore it does not make sense to include them as a basis for a private civil action for securities law violations.

Section 12. Amendment to 90-8-304.

This section is amended to make the change described earlier in this summary regarding the Montana Capital Company Act. This amendment would require that the exemption apply only to those companies which are "certified" capital companies, and not just those that apply to become "certified" companies under the Capital Company Act. A company seeking to be certified as a Montana capital company must make an application to the Montana Economic Development Board. The application must show that the applicant's purpose is to encourage and assist in the creation, development, and expansion of Montana-based businesses and to provide maximum opportunities for the employment of Montanans by making venture capital available to sound small Montana firms.

The reason for this exemption is to encourage companies to form capital in Montana to start and expand businesses. In order to protect investors, however, the Commissioner believes that this exemption should only be available to those companies who have become certified.

I have discussed this amendment with Mr. Bob Pancich of the Montana Economic Development Board, and he approves the amendment.

Section 13. Coordination instruction.

The coordination instruction provides that if SB 186, authorizing the registration of investment adviser representatives, does not pass, references in this bill to "investment adviser representatives," should be deleted.

# STANDING COMMITTEE REPORT

FEBRUARY 11, 19 87

MR. PRESIDENT

BUSINESS & INDUSTRY

We, your committee on.....

having had under consideration..... SENATE BILL No. 247

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color

GENERALLY REVISE SECURITY LAWS

Respectfully report as follows: That..... SENATE BILL No. 247

be amended as follows:

1. Page 18, line 1.  
Following: "er"  
Insert: "stop,"

And as amended,

~~DO PASS~~

XXXXXXXXXX  
DO NOT PASS

ALLEN C. KOLSTAD,

Chairman.

STATUS SHEET

50th LEGISLATIVE SESSION

BUSINESS AND LABOR

COMMITTEE

| SENATE<br>BILL<br>NUMBER | ENTERED<br>COM.<br>DATE | DATE<br>CON-<br>SIDERED | OUT OF<br>COM.    | DO PASS<br>DATE | DO NOT<br>PASS<br>DATE | DO<br>PASS AS<br>AMENDED<br>DATE | DO NOT<br>PASS AS<br>AMENDED<br>DATE | BE CON-<br>CURRED<br>IN<br>DATE | BE<br>NOT CON-<br>CURRED<br>IN<br>DATE | BE CON-<br>CURRED IN<br>AMENDED<br>DATE | BE NOT<br>CONCURRED<br>IN AS<br>AMENDED<br>DATE |
|--------------------------|-------------------------|-------------------------|-------------------|-----------------|------------------------|----------------------------------|--------------------------------------|---------------------------------|----------------------------------------|-----------------------------------------|-------------------------------------------------|
|                          |                         |                         |                   |                 |                        |                                  |                                      |                                 |                                        | 3/17/87                                 |                                                 |
| 213                      | 2/23/87                 | 3/11/87                 | 3/17/87           |                 |                        |                                  |                                      | 3/06/87                         |                                        |                                         |                                                 |
| 218                      | 2/18/87                 | 3/6/87                  | 3/6/87            |                 |                        |                                  |                                      | 3/17/87                         |                                        |                                         |                                                 |
| 222                      | 3/3/87                  | 3/17/87                 | 3/17/87           |                 |                        |                                  |                                      | 3/11/87                         |                                        |                                         |                                                 |
| 237                      | 2/23/87                 | 3/11/87                 | 3/11/87           |                 |                        |                                  |                                      | 3/5/87                          |                                        |                                         |                                                 |
| 242                      | 2/18/87                 | 3/5/87                  | 3/5/87            |                 |                        |                                  |                                      |                                 |                                        | 3/5/87                                  |                                                 |
| 245                      | 2/18/87                 | 3/5/87                  | 3/5/87            |                 |                        |                                  |                                      |                                 |                                        | 3/12/87                                 |                                                 |
| 247                      | 2/23/87                 | 3/12/87                 | 3/12/87           |                 |                        |                                  |                                      | 3/20/87                         |                                        |                                         |                                                 |
| 250                      | 2/23/87                 | 3/12/87                 | 3/20/87           |                 |                        |                                  |                                      |                                 |                                        | 3/12/87                                 |                                                 |
| 263                      | 2/23/87                 | 3/12/87                 | 3/12/87           |                 |                        |                                  |                                      |                                 |                                        |                                         |                                                 |
| 280                      | 2/24/87                 | 3/13/87                 | tabled<br>3/13/87 |                 |                        |                                  |                                      |                                 |                                        |                                         |                                                 |
| 291                      | 3/3/87                  | 3/17/87                 | tabled<br>3/26/87 |                 |                        |                                  |                                      | 3/12/87                         |                                        |                                         |                                                 |
| 294                      | 2/24/87                 | 3/12/87                 | 3/12/87           |                 |                        |                                  |                                      |                                 |                                        | 3/19/87                                 |                                                 |
| 295                      | 2/24/87                 | 3/12/87                 | 3/19/87           |                 |                        |                                  |                                      |                                 |                                        | 3/20/87                                 |                                                 |
| 298                      | 2/24/87                 | 3/6/87                  | 3/20/87           |                 |                        |                                  |                                      |                                 |                                        |                                         |                                                 |

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

BUSINESS & LABOR COMMITTEE

50TH LEGISLATIVE SESSION

1987

Committee Members

District

|                                 |    |
|---------------------------------|----|
| Rep. Les Kitselman, Chairman    | 95 |
| Rep. Fred Thomas, Vice Chairman | 62 |
| Rep. Bob Bachnini               | 14 |
| Rep. Ray Brandewie              | 49 |
| Rep. Jan Brown                  | 46 |
| Rep. Ben Cohen                  | 3  |
| Rep. Jerry Driscoll             | 92 |
| Rep. William Glaserl            | 98 |
| Rep. Larry Grinde               | 30 |
| Rep. Stella Jean Hansen         | 57 |
| Rep. Tom Jones                  | 4  |
| Rep. Lloyd McCormick            | 38 |
| Rep. Gerald Nisbet              | 35 |
| Rep. Bob Pavlovich              | 70 |
| Rep. Bruce Simon                | 91 |
| Rep. Clyde Smith                | 5  |
| Rep. Charles Swysgood           | 73 |
| Rep. Norm Wallin                | 78 |

Secretary

Elsie Sebens-Armstrong

Staff

Paul Verdon

MINUTES OF THE MEETING  
BUSINESS AND LABOR COMMITTEE  
50TH LEGISLATIVE SESSION

March 12, 1987

The meeting of the Business and Labor Committee was called to order by Chairman Les Kitselman on March 12, 1987 at 8:00 a.m. in Room 325 of the State Capitol.

ROLL CALL: All members were present, with the exception of Rep. Swysgood who was excused.

SENATE BILL 10 - No Standard Prevailing Wage on Locally Funded Local Government Projects, sponsored by Senator Gary Aklestad, Senate District No. 6, Galata. Senator Aklestad stated that this bill exempts local governments from the requirement of paying the standard prevailing rate of wages on local projects in which only local government funds are used. He stated the thrust of the legislation was to make more jobs and projects available in the local communities and will make the same amount of tax dollars in those communities go further. He commented that the problem they have in setting prevailing wage is when the Department conducts their surveys, most of the surveys are answered by union contractors, and this is not representative of what is really being paid in those local communities. He emphasized that this bill does not eliminate the Little Davis-Bacon Act, but was a compromise.

PROPONENTS

Stewart Doggett, Montana Chamber of Commerce. Mr. Doggett stated the current system gives preference to a select group of individuals at the expense of the public, and this bill addresses some serious problems. He said the Little Davis Bacon Act artificially establishes wage rates for all contracts let for public works, and wage rates should be established by the market place. He commented the Davis Bacon Act inflates the construction costs for any public works project, particularly for small county and municipal governments. He said that the current law benefits certain interest groups who use their political clout to set unreasonable and unnatural wage rates, and added that this is not a party issue, but one of economic necessity.

Jim Halverson, Roosevelt County Commissioner, submitted written testimony. Exhibit 1.

Mons Teigen, representing the Montana Stockgrowers and Cattlewomen Associations. Mr. Teigen stated they were very concerned about holding down the cost of county government. He said this bill would do that, and they support it for the



Rep. Jones made a motion that Senate Bill No. 103 BE CONCURRED IN. The motion carried 10 to 8.

SENATE BILL NO. 263 - Remove Hearing Requirement for Project Funded by Taxable Bonds, sponsored by Senator Bob Williams, Senate District No. 15, Hobson. Rep. Williams stated this bill was at the request of the Montana Economic Development Board, and requested that a technical amendment be made to the bill to insert in the phrase, "the interest of which is subject to federal tax". He said this would correct that "the bond" is not subject to federal tax. Exhibit No. 7.

Senator Williams stated that this bill would remove the requirement for holding public hearings on projects financed under the Montana Economic Development Bond Act of 1983 if the bonds financing the project are subject to federal income taxes.

PROPONENTS

None.

OPPONENTS

None.

QUESTIONS

Rep. Bachini asked Senator Williams that evidently there had been some concern to hold the public hearings, and asked why this requirement had been put into statute. Sen. Williams responded that this was put into law in 1983 and the reason for the public hearing was because the interest from the bonds was tax free, and the lending institutions wanted to know the reasons, so they would have to have the hearings. He said that at the end of 1986 that interest on those bonds are taxable and there is no need to have the hearing.

Rep. Cohen asked if it was correct that there was no need for a public hearing because the information that would be disclosed at a public hearing is published and available to the public. Senator Williams responded that was correct, the Economic Development Board must determine that the project is in the best interest of the public and they must publicly notice its meetings and agendas.

CLOSING

Senator Williams made no further comments.

SENATE BILL NO. 247 - Generally Revise Security laws, sponsored by Senator Darryl Meyer, Senate District No. 17, Great Falls. Senator Meyer stated this bill was requested by the State Auditor which would generally revise the laws relating to securities, and would modernize and keep

Montana's laws uniform with the securities laws of other states.

PROPONENTS

Kim Schulke, Deputy Securities Commissioner, presented written testimony which was a section by section review of the proposed legislation. She also stated she was available to answer questions. Exhibit No. 8.

Charles Gravely, representing IDS Financial Services. Mr. Gravely submitted their proposed amendments that had been discussed with the State Auditor's Office. He said with respect to the bill IDS believes that only those persons who are truly engaged in the business of rendering investment advise should be required to register as investment advisors. He said another concern was that the bill has an immediately effective date, and because the provision was already included continuing the authority of the Commissioner to make rules, and may be necessary to be propounded to implement all the provisions of the amendments in this act, it made more sense to postpone the effective date. Exhibit No. 9.

Rick Tucker, former Securities Officer. Mr. Tucker expressed his support of the legislation and the amendments.

OPPONENTS

None.

QUESTIONS

Rep. Brandewie asked Ms. Schulke to explain the amendments proposed by Mr. Gravely. Ms. Schulke responded that they would allow investment advisors who advise or attempt to advise 5 or fewer clients in Montana to not have to comply with the registration requirements of the act.

CLOSING

Sen. Meyer made no further comments.

SENATE BILL 294 - Increase Charges that Farm Mutual Insurer Must Pay for Examination of Books, sponsored by Senator Darryl Meyer. Senator Meyer stated this bill would increase the charges that a farm mutual insurer must pay for investigation and examination of his affairs by the Commissioner of Insurance.

PROPONENTS

Kathy Irigoin, State Auditor's Office. Ms. Irigoin stated that at present with regular insurance companies they can charge them whatever amount it takes to examine the company and the insurance company pays for it. She said with farm mutuals they are limited to charging only \$100, and an

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Ms. Irigoin stated that if there were any specific questions that the Chief Examiner, Jim Borchardt, could explain in more detail, she suggested waiting until he was available.

Rep. Brandewie suggested holding action on this bill until Mr. Borchardt was available to answer questions.

CLOSING

Sen. Meyer made no further comments.

EXECUTIVE ACTION

ACTION ON SENATE BILL 294

Rep. Driscoll moved that Senate Bill No. 294 BE CONCURRED IN.

Rep. Simon moved the amendment to strike the effective date.

Paul Verdon, staff researcher, stated that if the effective date was deleted, the extension of authority wouldn't go into effect either until October 1. The motion failed.

Rep. Driscoll moved SB 294 BE CONCURRED IN. The motion carried unanimously.

Rep. Driscoll will carry the bill in the House.

ACTION ON SENATE BILL NO. 247

Rep. Brandewie moved that Senate Bill No. 247 BE CONCURRED IN.

Rep. Brandewie moved the amendments to SB 247. the motion carried unanimously.

Rep. Simon moved an amendment to strike the effective date in the legislation.

Mr. Verdon stated that if the effective date was deleted, the extension of authority wouldn't go into effect until October 1, the same as SB 294. The motion failed.

Rep. Thomas moved an amendment to make section 14 effective immediately to address the rule making authority, and strike the effective date. The motion failed.

Rep. Brandewie moved that Senate Bill No. 247 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

Rep. Brandewie will sponsor the bill in the House.



DAILY ROLL CALL

BUSINESS & LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date MARCH 12, 1987

| NAME                            | PRESENT | ABSENT | EXCUSED |
|---------------------------------|---------|--------|---------|
| REP. LES KITSELMAN, CHAIRMAN    | ✓       |        |         |
| REP. FRED THOMAS, VICE-CHAIRMAN | ✓       |        |         |
| REP. BOB BACHINI                | ✓       |        |         |
| REP. RAY BRANDEWIE              | ✓       |        |         |
| REP. JAN BROWN                  | ✓       |        |         |
| REP. BEN COHEN                  | ✓       |        |         |
| REP. JERRY DRISCOLL             | ✓       |        |         |
| REP. WILLIAM GLASER             | ✓       |        |         |
| REP. LARRY GRINDE               | ✓       |        |         |
| REP. STELLA JEAN HANSEN         | ✓       |        |         |
| REP. TOM JONES                  | ✓       |        |         |
| REP. LLOYD MCCORMICK            | ✓       |        |         |
| REP. GERALD NISBET              | ✓       |        |         |
| REP. BOB PAVLOVICH              | ✓       |        |         |
| REP. BRUCE SIMON                | ✓       |        |         |
| REP. CLYDE SMITH                | ✓       |        |         |
| REP. CHARLES SWYSGOOD           |         |        | ✓       |
| REP. NORM WALLIN                | ✓       |        |         |
|                                 |         |        |         |
|                                 |         |        |         |
|                                 |         |        |         |
|                                 |         |        |         |
|                                 |         |        |         |

# STANDING COMMITTEE REPORT

MARCH 12

19 87

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report SENATE BILL NO. 247

☐ do pass  
☐ do not pass

☒ be concurred in  
☐ be not concurred in

☒ as amended  
☐ statement of intent attached

REP. LES KITSELMAN

Chairman

## AMENDMENTS AS FOLLOWS:

*Page 20, line 15*  
1) ~~Page 20, line 15~~  
Following: "commissioner"  
Insert: "; or

(d) he has no place of business in this state and during any 12 consecutive months does not direct business communications in this state in any manner to more than five present or prospective clients, other than those specified in subsection (c), whether or not he or any of the persons to whom the communications are directed is then present in this state."

Rep. Ray Brandewie will sponsor

THIRD

BLUE

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color

Kim Schulke  
Deputy Securities Commissioner  
444-5236

EXHIBIT 8  
DATE 3.12.87  
HB SB 247

SB 247  
GENERAL REVISION OF SECURITIES LAWS

Requested by State Auditor and Commissioner of Securities,  
Andrea "Andy" Bennett

SECTION BY SECTION REVIEW

Section 1. Amendment to 30-10-103.

In subsection (2)(a), some renumbering has been done to reflect amendments to 30-10-104, which are contained in Section 2 of this bill.

In subsection (6)(b), an addition has been made to the term "investment adviser," to include persons who provide investment advisory services as an integral part of other financially related services or persons who represent that they are providing investment advisory services for compensation.

Subsection (6)(c)(iv) has been amended to reflect the change in the law as set forth in the 1985 U.S. Supreme Court case of Lowe v. Securities and Exchange Commission. That case held that it was a violation of the first amendment right of free speech for the SEC to prohibit the publishing of nonpersonalized investment advice.

Subsection (6)(f) has been deleted. The substance of this section has been moved to Section 4 of this bill, on page 20. As the law currently exists, certain persons who have no place of business in this state, and whose clients are sophisticated investors, are excluded from the definition of investment adviser so that the Securities Act does not apply to them at all. By moving this exclusion from Section 1 to Section 4 of this bill, we are recognizing that these particular persons are in fact investment advisers and the Securities Act does apply to them, but they do not have to register in order to do business here. The anti-fraud provisions of the Securities Act will now apply to those particular investment advisers.

In subsection 11, the "Investment Advisors Act of 1940," has been added to the list of federal statutes to which the Securities Act of Montana refers. The Investment Advisors Act of 1940, is referred to in an amendment contained in Section 4 of this bill.

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A new subsection 14 has been added to define the terms "transact", "transact business", and "transaction". These terms are used in the Securities Act, but have not been defined. The lack of a definition has been used against our Department in at least one case where a criminal defendant was charged under 30-10-201, which prohibits a person from transacting business in this state as a broker-dealer or salesman unless they are registered under the Securities Act. We overcame the problem in that case, by researching the history of the Uniform Securities Act. We were able to determine that the term "transact business" was meant to include both the offer and sale of securities. In order to clarify the Securities Act and provide notice to those subject to its provisions, we propose this definition.

#### Section 2. Amendment to 30-10-104.

Subsection 5 deletes the exemption from registration of any insurance or endowment policy or annuity contracts which is subject to the supervision of the insurance commissioner. The definition of "security" as set forth in 30-10-103(12) states that it does not include these products. Therefore, it is useless to provide an exemption from registration for them in the Securities Act since they aren't securities. When the Uniform Securities Act was adopted in Montana, either one or the other of these provisions should have been adopted, but not both. Taking this exemption out will make it clear that the Securities Act of Montana does not apply to these insurance products. Such products are already regulated by the insurance commissioner.

#### Section 3. Amendment to 30-10-105.

Subsection 1 provides an exemption from registration for transactions not for the benefit of the issuer of the securities, if that transaction is an "isolated" transaction. The suggested amendment here clarifies when a transaction is deemed to be "isolated." A transaction is presumed to be isolated if it is one of not more than 3 transactions during the prior 12-month period.

In reviewing similar exemptions in other states, the 3 transactions in a 12-month period appears to be standard.

This exemption allows you and I to sell the securities we hold, assuming we are not the issuer of those securities, without the requirement of registration.

Subsection (11) adds "denial suspension or revocation." This section provides an exemption from registration for an offer of a security for which registration statements have been filed under the Securities Act of Montana and the federal Securities Act of 1933, if none of these orders is in effect or pending. The Securities Act of Montana does not define or use "stop" or

"refusal" order; therefore, we have added the terms our act does use: "denial, suspension, or revocation" orders. The federal securities acts use the term "stop" order. This amendment clarifies that any of these orders will invalidate the exemption.

Subsection (15) provides that the commissioner may create additional exemptions by administrative rule. The amendment to this section provides that the commissioner may require registration of the broker-dealer, the salesman, or the securities in particular instances. This gives the commissioner flexibility in balancing the needs of investor protection and the facilitation of capital formation in Montana.

Subsection (16) provides an exemption from registration for transactions by a Montana capital company as defined in the Montana Capital Company Act. This amendment would require that the exemption apply only to those companies which are "certified" capital companies, and not just those that apply to become "certified" companies under the Capital Company Act. A company seeking to be certified as a Montana capital company must make an application to the Montana Economic Development Board. The application must show that the applicant's purpose is to encourage and assist in the creation, development, and expansion of Montana-based businesses and to provide maximum opportunities for the employment of Montanans by making venture capital available to sound small Montana firms.

The reason for this exemption is to encourage companies to form capital in Montana to start and expand businesses. In order to protect investors, however, the Commissioner believes that this exemption should only be available to those companies who have become certified.

I have discussed this amendment with Mr. Bob Pancich of the Montana Economic Development Board, and he approves the amendment.

#### Section 4. Amendment to 30-10-201.

Subsection (3)(c) provides that an investment adviser whose only clients in this state are certain sophisticated investors, need not register here. The amendment to this subsection adds several more types of sophisticated investors to this list. This amendment is made to modernize Montana's securities law to make them uniform with the laws of other states.

Subsection (4) currently provides that all securities salesmen must be legal residents of this state unless they work for brokerage firms governed by the SEC. There is no reason for this requirement, and it might be argued that this requirement results in the denial of equal protection for salesmen who do not work for those firms. A \$50 fee was required to waive the residency requirement. Deletion of the residency requirement will have a small fiscal impact on the revenues of the Securities Department, as noted in the fiscal note attached to the bill.

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The amendments to subsections (5) and (6) provide that a registration application cannot be withdrawn from consideration without consent of the commissioner. This amendment is made to prevent a situation that arose a few years ago in our Department. An issuer filed a registration application which was incomplete. Included within the application were financial statements which the commissioner believed grossly overstated the net worth of the general partner of the venture. When the commissioner questioned the statements, the applicant withdrew the application. The commissioner then brought an action alleging the filing of false information. The applicant argued that he could withdraw his application at any time before it was complete, and thereby avoid liability for false information filed with the commissioner. If we hadn't caught the allegedly false information, it could have been used to sell securities in this state, and could have mislead investors. This amendment will require approval of the commissioner before an application is allowed to be withdrawn, thereby giving the commissioner an opportunity to take formal action against an incomplete, but possibly misleading application.

Subsection (10)(f) allows the commissioner to deny, suspend or revoke the registration of a broker-dealer, salesman or investment adviser if such person or firm is subject to an order of the securities commissioner of any other state or by the SEC. The amendment clarifies to which orders the persons or firms are subject, and adds orders based on violations of the Investment Advisors Act of 1940, the Investment Company Act of 1940, and the various commodities laws.

New subsection (10)(k) allows the commissioner to deny, suspend or revoke the registration of a broker-dealer or investment adviser for failure to supervise his salesman or investment adviser representatives. This provision appeared in the Uniform Securities Act, but was not adopted in Montana in 1961 when we adopted most of that uniform act. Most other states, and the SEC have similar provisions. It requires the broker-dealer and the investment adviser to closely monitor the activities of their employees in connection with the offer and sale of securities and the giving of investment advice in Montana.

New subsection (11) states that the commissioner may not bring a suspension or revocation action based on a fact known to the commissioner when the registration became effective unless the proceeding is begun within 30 days after the date on which the registration becomes effective. This provides an applicant with the assurance that, if no action is brought within 30 days after his registration is made effective, the application will not be revoked or suspended based on information known to the commissioner at the time of registration.

New subsection (12) gives the commissioner the authority to summarily postpone or suspend registration pending a final determination of any revocation, denial or suspension action. This summary procedure is allowed by the Montana Administrative Procedure Act, section 2-4-631(3), MCA.

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The amendment to subsection (13) allows the commissioner to extend a summary denial, suspension or revocation order until a final order is issued by the hearing examiner, after the applicant has had an opportunity to contest such action.

Section 5. Amendment to 30-10-204.

Section 30-10-204 describes the procedure whereby securities can become registered in Montana by coordination with a federal securities registration. Such applicants, under current law, must submit 3 copies of the prospectus to our office. We routinely throw away 2 of those copies. Therefore, it is ridiculous for the department to ask for 3. The amendment to 30-10-204(1)(a) deletes this requirement.

In 30-10-204(4), "stop" order is replaced by "denial" order, as discussed earlier in this summary. The correct term under Montana law is a denial order; our statutes do not use the term "stop" order.

Section 6. Amendment to 30-10-206.

New subsection (5) requires written consent of the commissioner before a securities application can be withdrawn. This prevents an applicant from filing false information with the commissioner and then withdrawing his application before the commissioner can take action for the filing of such information.

Section 7. Amendment to 30-10-207.

In section 30-10-207(2) "stop" order is replaced by "suspension or revocation" order, again because the Securities Act of Montana does not use or define the term "stop" order.

Section 8. Amendment to 30-10-209.

Subsection (5) is deleted because the residency requirement has been excised from the Securities Act.

Section 9. Amendment to 30-10-301.

Subsection (2) describes fraudulent and other prohibited practices of investment advisers. Current law reads that a person who gets consideration from another primarily for advising the other as to the value of securities, cannot engage in certain practices. The amendment to this section provides that the consideration can be received directly or indirectly, and that the consideration need not be primarily in return for the investment advice.

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The words "directly or indirectly" are added and the word "primarily" is deleted, to ensure that all persons, including officers, directors, and investment adviser representatives of an investment adviser, who receive compensation from an employer who renders investment advice rather than directly from a client, are subject to this section.

The addition of new subsection (2)(a)(iii) is the equivalent of section 206(3) of the federal Investment Advisers Act of 1940 which requires an adviser and persons associated with the adviser, who act as principal or effect transactions between clients, to disclose in writing the capacity in which the adviser or associated person is acting and obtain the consent of the client to the transactions prior to completion of the transaction. This allows for the disclosure of possible conflicts of interest in the giving of investment advice.

New subsection (2)(b) provides that the disclosures required by (2)(a)(iii) are not required of broker-dealers who are not being compensated for rendering investment advice.

The addition of new subsection (3) is intended to cover fraudulent practices committed in the solicitation of clients rather than in the rendition of advice, which is addressed in subsection (2)(a).

Under current law, 30-10-301(3) provided that it is unlawful for an investment adviser to enter into an investment advisory contract unless certain requirements were met. In order to make this requirement more flexible, the amendment to that subsection, which has become 30-10-301(4), provides that the commissioner may allow contracts without those requirements, by rule or order.

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Section 12. Amendment to 90-8-304.

This section is amended to make the change described earlier in this summary regarding the Montana Capital Company Act. This amendment would require that the exemption apply only to those companies which are "certified" capital companies, and not just those that apply to become "certified" companies under the Capital Company Act. A company seeking to be certified as a Montana capital company must make an application to the Montana Economic Development Board. The application must show that the applicant's purpose is to encourage and assist in the creation, development, and expansion of Montana-based businesses and to provide maximum opportunities for the employment of Montanans by making venture capital available to sound small Montana firms.

The reason for this exemption is to encourage companies to form capital in Montana to start and expand businesses. In order to protect investors, however, the Commissioner believes that this exemption should only be available to those companies who have become certified.

I have discussed this amendment with Mr. Bob Pancich of the Montana Economic Development Board, and he approves the amendment.

Section 13. Coordination instruction.

The coordination instruction provides that if SB 186, authorizing the registration of investment adviser representatives, does not pass, references in this bill to "investment adviser representatives," should be deleted.

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EXHIBIT

DATE

HB

9  
3.12.87  
SB 247

Senate Bill #247  
Amendments

Section 30-10-201 (3) --- on Page 20, Line 15, after  
commissioner Strike "." insert ", or"

(d)  
On Page 20, Line 16 insert "he has no place of business  
in this state and during any twelve consecutive months  
does not direct business communications in this state in  
any manner to more than five clients, other than those  
specified in subparagraphs (c) (i)-(ix) above, whether  
or not he or any of the persons to whom the  
communications are directed is then present in this  
state."

## COMMITTEE

DATE        MARCH 12, 1987

[illegible]

CS-33

## SENATE BILL NO. 247

INTRODUCED BY MEYER, BRANDEWIE, MILLER

BY REQUEST OF THE STATE AUDITOR AND

SECURITIES COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO SECURITIES; AMENDING SECTIONS 30-10-103 THROUGH 30-10-105, 30-10-201, 30-10-204, 30-10-206, 30-10-207, 30-10-209, 30-10-301, 30-10-304, 30-10-307, AND 90-8-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commissioner" means securities commissioner of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesman only if he otherwise comes within this definition. "Salesman" does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by subsections (1), (2), (3), (8), (9), (10), or (11)~~7-or--(12)~~ of 30-10-104;

(b) effecting transactions exempted by 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) a salesman, issuer, bank, savings institution, trust company, or insurance company; or

(b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(4) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

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(5) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(6) (a) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (6)(a) to others for compensation, as part of a business; or

(ii) represents himself as providing the investment advisory services described in subsection (6)(a) to others for compensation.

(c) "Investment adviser" does not include:

(a)(i) a bank, savings institution, trust company, or insurance company;

(b)(ii) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(c)(iii) a broker-dealer;

(d)(iv) a publisher of any bona-fide newspaper, news column, newsletter, news magazine, or business or financial publication of general, regular, and paid circulation or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(e)(v) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1); or

(f) a person who has no place of business in this state if his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(g)(vi) such other persons not within the intent of this subsection (5) (6) as the commissioner may by rule or order designate.

(7) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated

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investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(8) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(9) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(10) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A

purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(11) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.

(12) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or

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warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period.

(13) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(14) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer".

Section 2. Section 30-10-104, MCA, is amended to read:

"30-10-104. Exempt securities. Sections 30-10-202 through 30-10-207 do not apply to any of the following securities:

(1) any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; provided, however, 30-10-202 through 30-10-207 apply to a security issued by any of the foregoing that is payable solely from payments to be received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise,

unless such enterprise or any security of which it is the issuer is within any of the exemptions enumerated in subsections (2) through (9) (13) of this section;

(2) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of or guaranteed by any bank organized under the laws of the United States or any bank, savings institution, or trust company organized and supervised under the laws of any state;

(4) any security issued by and representing an interest in or a debt of or guaranteed by any federal savings and loan association or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

~~(5) any insurance or endowment policy or annuity contract or optional annuity contract issued by a corporation subject to the supervision of the insurance commissioner;~~

(6)(5) any security issued or guaranteed by any

1 federal credit union or any credit union, industrial loan  
2 association, or similar association organized and supervised  
3 under the laws of this state;

4 ~~(7)~~(6) any security issued or guaranteed by any  
5 railroad, other common carrier, public utility, or holding  
6 company which is:

7 (a) subject to the jurisdiction of the interstate  
8 commerce commission;

9 (b) a registered holding company under the Public  
10 Utility Holding Company Act of 1935 or a subsidiary of such  
11 a company within the meaning of that act;

12 (c) regulated in respect of its rates and charges by a  
13 governmental authority of the United States or any state or  
14 municipality; or

15 (d) regulated in respect to the issuance or guarantee  
16 of the security by a governmental authority of the United  
17 States, any state, Canada, or any Canadian province; also  
18 equipment trust certificates in respect to equipment  
19 conditionally sold or leased to a railroad or public utility  
20 if other securities issued by such railroad or public  
21 utility would be exempt under this subsection;

22 ~~(8)~~(7) any security that meets all of the following  
23 conditions:

24 (a) if the issuer is not organized under the laws of  
25 the United States or a state, it has appointed a duly

1 authorized agent in the United States for service of process  
2 and has set forth the name and address of such agent in its  
3 prospectus;

4 (b) a class of the issuer's securities is required to  
5 be and is registered under section 12 of the Securities  
6 Exchange Act of 1934 and has been so registered for the 3  
7 years immediately preceding the offering date;

8 (c) neither the issuer nor a significant subsidiary  
9 has had a material default during the last 7 years (or the  
10 issuer's existence if less than 7 years) in the payment of:

11 (i) principal, interest, dividend, or sinking fund  
12 installment on preferred stock or indebtedness for borrowed  
13 money; or

14 (ii) rentals under leases with terms of 3 years or  
15 more;

16 (d) the issuer has had consolidated net income (before  
17 extraordinary items and the cumulative effect of accounting  
18 changes) of at least \$1 million in 4 of its last 5 fiscal  
19 years, including its last fiscal year; and if the offering  
20 is of interest-bearing securities, has had for its last  
21 fiscal year such net income, but before deduction for income  
22 taxes and depreciation, of at least 1 1/2 times the issuer's  
23 annual interest expense, giving effect to the proposed  
24 offering and the intended use of the proceeds. "Last fiscal  
25 year" as used in this subsection ~~(8)~~(7)(d), means the

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1 most recent year for which audited financial statements are  
2 available, provided that such statements cover a fiscal  
3 period ended not more than 15 months from the commencement  
4 of the offering.

5 (e) if the offering is of stock or shares, other than  
6 preferred stock or shares, such securities have voting  
7 rights and such rights include the right to have at least as  
8 many votes per share and the right to vote on at least as  
9 many general corporate decisions as each of the issuer's  
10 outstanding classes of stock or shares, except as otherwise  
11 required by law;

12 (f) if the offering is of stock or shares, other than  
13 preferred stock or shares, such securities are owned  
14 beneficially or of record on any date within 6 months prior  
15 to the commencement of the offering by at least 1,200  
16 persons and on such date there are at least 750,000 such  
17 shares outstanding with an aggregate market value, based on  
18 the average bid price for that day, of at least \$3,750,000.  
19 In connection with the determination of the number of  
20 persons who are beneficial owners of the stock or shares of  
21 an issuer, the issuer or broker-dealer may rely in good  
22 faith for the purposes of this section upon written  
23 information furnished by the record owners.

24 †9†(8) any security issued by any person organized and  
25 operated not for private profit but exclusively for

1 religious, educational, benevolent, charitable, fraternal,  
2 social, athletic, or reformatory purposes if the issuer pays  
3 a fee of \$50 and files with the commissioner 20 days prior  
4 to the offering a written notice specifying the terms of the  
5 offer and the commissioner does not disallow the exemption  
6 in writing within such 20-day period;

7 †10†(9) any commercial paper which arises out of a  
8 current transaction or the proceeds of which have been or  
9 are to be used for current transaction and which evidences  
10 an obligation to pay cash within 9 months of the date of  
11 issuance, exclusive of days of grace, or any renewal of such  
12 paper which is likewise limited or any guarantee of such  
13 paper or of any such renewal, when such commercial paper is  
14 sold to the banks or insurance companies;

15 †11†(10) any investment contract issued in connection  
16 with an employee's stock purchase, savings, pension,  
17 profit-sharing, or similar benefit plan;

18 †12†(11) any security for which the commissioner  
19 determines by order that an exemption would better serve the  
20 purposes of 30-10-102 than would registration. The fee for  
21 this exemption must be as prescribed in 30-10-209(4).

22 †13†(12) any security listed or approved for listing  
23 upon notice of issuance on the New York stock exchange, the  
24 American stock exchange, the Pacific stock exchange, the  
25 Midwest stock exchange, or any other stock exchange

1 registered with the federal securities and exchange  
2 commission and approved by the commissioner; any other  
3 security of the same issuer that is of senior or  
4 substantially equal rank; any security called for by  
5 subscription rights or warrants so listed or approved; or  
6 any warrant or right to purchase or subscribe to any of the  
7 foregoing;

8 ~~(14)~~(13) any national market system security listed or  
9 approved for listing upon notice of issuance on the national  
10 association of securities dealers automated quotation system  
11 or any other national quotation system approved by the  
12 commissioner; any other security of the same issuer that is  
13 of senior or substantially equal rank; any security called  
14 for by subscription rights or warrants so listed or  
15 approved; or any warrant or right to purchase or subscribe  
16 to any of the securities listed in this subsection."

17 Section 3. Section 30-10-105, MCA, is amended to read:

18 "30-10-105. Exempt transactions. Except as in this  
19 section expressly provided, 30-10-201 through 30-10-207  
20 shall not apply to any of the following transactions:

21 (1) any nonissuer isolated transaction, whether  
22 effected through a broker-dealer or not. A transaction is  
23 presumed to be isolated if it is one of not more than three  
24 transactions during the prior 12-month period.

25 (2) (a) any nonissuer distribution of an outstanding

1 security by a broker-dealer registered pursuant to 30-10-201  
2 if:

3 (i) quotations for the securities to be offered or  
4 sold (or the securities issuable upon exercise of any  
5 warrant or right to purchase or subscribe to such  
6 securities) are reported by the automated quotations system  
7 operated by the national association of securities dealers,  
8 inc., (NASDAQ) or by any other quotation system approved by  
9 the commissioner by rule; or

10 (ii) the security has a fixed maturity or a fixed  
11 interest or dividend provision and there has been no default  
12 during the current fiscal year or within the 3 preceding  
13 fiscal years, or during the existence of the issuer and any  
14 predecessors if less than 3 years, in the payment of  
15 principal, interest, or dividends on the security.

16 (b) The commissioner may by order deny or revoke the  
17 exemption specified in subsection (2)(a) with respect to a  
18 specific security. Upon the entry of such an order, the  
19 commissioner shall promptly notify all registered  
20 broker-dealers that it has been entered and of the reasons  
21 therefor and that within 15 days of the receipt of a written  
22 request the matter will be set down for hearing. If no  
23 hearing is requested and none is ordered by the  
24 commissioner, the order will remain in effect until it is  
25 modified or vacated by the commissioner. If a hearing is

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1 requested or ordered, the commissioner, after notice of and  
 2 opportunity for hearing to all interested persons, may  
 3 modify or vacate the order or extend it until final  
 4 determination. No order under this subsection may operate  
 5 retroactively. No person may be considered to have violated  
 6 parts 1 through 3 of this chapter by reason of any offer or  
 7 sale effected after the entry of an order under this  
 8 subsection if he sustains the burden of proof that he did  
 9 not know and in the exercise of reasonable care could not  
 10 have known of the order.

11 (3) any nonissuer transaction effected by or through a  
 12 registered broker-dealer pursuant to an unsolicited order or  
 13 offer to buy, but the commissioner may require that the  
 14 customer acknowledge upon a specified form that the sale was  
 15 unsolicited and that a signed copy of each form be preserved  
 16 by the broker-dealer for a specified period;

17 (4) any transaction between the issuer or other person  
 18 on whose behalf the offering is made and an underwriter or  
 19 among underwriters;

20 (5) any transaction by an executor, administrator,  
 21 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
 22 or conservator in the performance of his official duties as  
 23 such;

24 (6) any transaction executed by a bona fide pledgee  
 25 without any purpose of evading parts 1 through 3 of this

1 chapter;

2 (7) any offer or sale to a bank, savings institution,  
 3 trust company, insurance company, investment company as  
 4 defined in the Investment Company Act of 1940, pension or  
 5 profit-sharing trust, or other financial institution or  
 6 institutional buyer, or to a broker-dealer, whether the  
 7 purchaser is acting for itself or in some fiduciary  
 8 capacity;

9 (8) (a) any transaction pursuant to an offer made in  
 10 this state directed by the offeror to not more than 10  
 11 persons (other than those designated in subsection (7))  
 12 during any period of 12 consecutive months, if:

13 (i) the seller reasonably believes that all the buyers  
 14 are purchasing for investment; and

15 (ii) no commission or other remuneration is paid or  
 16 given directly or indirectly for soliciting any prospective  
 17 buyer; provided, however, that a commission may be paid to a  
 18 registered broker-dealer if the securities involved are  
 19 registered with the United States securities and exchange  
 20 commission under the federal Securities Act of 1933, as  
 21 amended.

22 (b) For the purpose of the exemption provided for in  
 23 subsection (8)(a), an offer to sell is made in this state,  
 24 whether or not the offeror or any of the offerees is then  
 25 present in this state, if the offer either originates from

1 this state or is directed by the offeror to this state and  
2 received at the place to which it is directed (or at any  
3 post office in this state in the case of a mailed offer).

4 (9) any offer or sale of a preorganization certificate  
5 or subscription if:

6 (a) no commission or other remuneration is paid or  
7 given directly or indirectly for soliciting any prospective  
8 subscriber;

9 (b) the number of subscribers does not exceed 10; and

10 (c) no payment is made by any subscriber;

11 (10) any transaction pursuant to an offer to existing  
12 security holders of the issuer, including persons who at the  
13 time of the transaction are holders of convertible  
14 securities, nontransferable warrants, or transferable  
15 warrants exercisable within not more than 90 days of their  
16 issuance, if:

17 (a) no commission or other remuneration (other than a  
18 standby commission) is paid or given directly or indirectly  
19 for soliciting any security holder in this state; or

20 (b) the issuer first files a notice specifying the  
21 terms of the offer and the commissioner does not by order  
22 disallow either (a) or (b) of this subsection;

23 (11) any offer (but not a sale) of a security for which  
24 registration statements have been filed under both parts 1  
25 through 3 of this chapter and the Securities Act of 1933 if

1 no ~~stop-order~~--or STOP, refusal, denial, suspension, or  
2 revocation order is in effect and no public proceeding or  
3 examination looking toward such an order is pending under  
4 either law;

5 (12) any offer (but not a sale) of a security for which  
6 a registration statement has been filed under parts 1  
7 through 3 of this chapter and the commissioner in his  
8 discretion does not disallow the offer in writing within 10  
9 days of such filing;

10 (13) the issuance of any stock dividend, whether the  
11 corporation distributing the dividend is the issuer of the  
12 stock or not, if nothing of value is given by stockholders  
13 for the distribution other than the surrender of a right to  
14 a cash dividend where the stockholder can elect to take a  
15 dividend in cash or stock;

16 (14) any transaction incident to a right of conversion  
17 or a statutory or judicially approved reclassification,  
18 recapitalization, reorganization, quasi-reorganization,  
19 stock split, reverse stock split, merger, consolidation, or  
20 sale of assets;

21 (15) any transaction in compliance with such rules as  
22 the commissioner in his discretion may adopt to serve the  
23 purposes of 30-10-102;--or. The commissioner may in his  
24 discretion require that 30-10-201 through 30-10-207 apply to  
25 any or all transactional exemptions adopted by rule.

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~~(16) any transaction pursuant to the Montana Capital Company Act, Title 90, Chapter 8, provided that a Montana capital company must by a certified Montana capital company as defined in 90-8-104, provided that such company first file files all disclosure documents, along with a consent to service of process, with the state securities commissioner. The commissioner may not charge a fee for the filing or deposit."~~

Section 4. Section 30-10-201, MCA, is amended to read:

"30-10-201. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under 30-10-105, unless he is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesman to represent him in this state, except in transactions exempt under 30-10-105, unless the salesman is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business in this state as an investment adviser unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter; or

(c) his only clients in this state are:

(i) investment companies, as defined in the Investment Company Act of 1940, or insurance companies;

(ii) other investment advisers;

(iii) broker-dealers;

(iv) banks;

(v) trust companies;

(vi) savings and loan associations;

(vii) employee benefit plans with assets of not less than \$1 million;

(viii) governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control; or

(ix) other institutional investors as are designated by rule or order of the commissioner; OR

(D) HE HAS NO PLACE OF BUSINESS IN THIS STATE AND DURING ANY 12 CONSECUTIVE MONTHS DOES NOT DIRECT BUSINESS COMMUNICATIONS IN THIS STATE IN ANY MANNER TO MORE THAN FIVE PRESENT OR PROSPECTIVE CLIENTS, OTHER THAN THOSE SPECIFIED IN SUBSECTION (3)(C), WHETHER OR NOT HE OR ANY OF THE PERSONS TO WHOM THE COMMUNICATIONS ARE DIRECTED ARE THEN PRESENT IN THIS STATE.

(4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment



adviser may apply for registration by filing an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. ~~Except-for-persons-in--the employ-of-brokerage-firms-governed-by-the-regulations-of-the securities--and--exchange--commission,--all-salesmen-must-be legal-residents-of-this-state-and-must-have-actually-resided in-this-state-for-a-period-of-at-least-1-year-next-prior--to the--date--of-application-for-registration--The-commissioner may, upon request and for good cause shown by an applicant, waive--the-residency-requirement,--Payment-of-the-waiver-fee shall-be-as-prescribed-in-30-10-209.~~ A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(5) The application shall contain whatever information

the commissioner requires. No registration application of a broker-dealer, salesman, investment adviser, or investment adviser representative may be withdrawn before the commissioner approves or denies such registration, without the express written consent of the commissioner.

(6) When the registration requirements are complied with met, the commissioner shall ~~approve-the-registration-~~ make the registration effective. No effective registration of a broker-dealer, salesman, investment adviser, or investment adviser representative may be withdrawn without the express written consent of the commissioner.

(7) Registration of a broker-dealer, salesman, or investment adviser shall be effective until December 31 following such registration or such other time as the commissioner may by rule adopt and may be renewed. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(8) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing an application containing such information as the commissioner may require to indicate any

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1 material change in the information contained in the original  
 2 application or any renewal application for registration as a  
 3 broker-dealer, salesman, or investment adviser filed by the  
 4 applicant, payment of the prescribed fee, and, in the case  
 5 of a broker-dealer who is not a member of NASD, inc., by  
 6 filing a financial statement showing the financial condition  
 7 of such broker-dealer as of a date within 90 days. A  
 8 registered broker-dealer or investment adviser may file an  
 9 application for registration of a successor, to become  
 10 effective upon approval of the commissioner.

11 (9) Every registered broker-dealer and investment  
 12 adviser shall make and keep such accounts and other records,  
 13 except with respect to securities exempt under 30-10-104(1),  
 14 as may be prescribed by the commissioner. All records so  
 15 required shall be preserved for 3 years unless the  
 16 commissioner prescribes otherwise for particular types of  
 17 records. All the records of a registered broker-dealer or  
 18 investment adviser are subject at any time or from time to  
 19 time to such reasonable periodic, special, or other  
 20 examinations, within or without this state, by  
 21 representatives of the commissioner, as the commissioner  
 22 considers necessary or appropriate in the public interest or  
 23 for the protection of investors.

24 (10) The commissioner may by order deny, suspend, or  
 25 revoke registration of any broker-dealer, salesman, or

1 investment adviser if he finds that the order is in the  
 2 public interest and that the applicant or registrant or, in  
 3 the case of a broker-dealer or investment adviser, any  
 4 partner, officer, or director:

5 (a) has filed an application for registration under  
 6 this section which, as of its effective date or as of any  
 7 date after filing in the case of an order denying  
 8 effectiveness, was incomplete in any material respect or  
 9 contained any statement which was, in the light of the  
 10 circumstances under which it was made, false or misleading  
 11 with respect to any material fact;

12 (b) has willfully violated or willfully failed to  
 13 comply with any provision of parts 1 through 3 of this  
 14 chapter or a predecessor law or any rule or order under  
 15 parts 1 through 3 of this chapter or a predecessor law;

16 (c) has been convicted of any misdemeanor involving a  
 17 security or any aspect of the securities business or any  
 18 felony;

19 (d) is permanently or temporarily enjoined by any  
 20 court of competent jurisdiction from engaging in or  
 21 continuing any conduct or practice involving any aspect of  
 22 the securities business;

23 (e) is the subject of an order of the commissioner  
 24 denying, suspending, or revoking registration as a  
 25 broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer, salesman, or investment adviser or the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or is the subject of a United States post office fraud order, but:

(i) the commissioner may not institute a revocation or suspension proceeding under this subsection (f) more than 1 year from the date of the order relied on, and

(ii) he may not enter any order under this subsection (f) on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section; adjudication or determination, within the past 5 years, by a securities or commodities agency or administrator of another state or a court of competent jurisdiction, that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act or the securities or

commodities law of any other state;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected; or

(k) has failed to reasonably supervise his salesmen or employees, if he is a broker-dealer, or his investment adviser representatives or employees, if he is an investment adviser, to assure their compliance with this act.

(11) The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within 30 days after the date on

1 which the registration became effective.

2 (12) The commissioner may by order summarily postpone  
3 or suspend registration pending final determination of any  
4 proceeding under this section.

5 ~~(11)~~(13) Upon the entry of the order under subsection  
6 (10) of this section, the commissioner shall promptly notify  
7 the applicant or registrant, as well as the employer or  
8 prospective employer if the applicant or registrant is a  
9 salesman, that it has been entered and of the reasons  
10 therefor and that if requested by the applicant or  
11 registrant within 15 days after the receipt of the  
12 commissioner's notification the matter will be promptly set  
13 down for hearing. If no hearing is requested within 15 days  
14 and none is ordered by the commissioner, the order will  
15 remain in effect until it is modified or vacated by the  
16 commissioner. If a hearing is requested or ordered, the  
17 commissioner, after notice of and opportunity for hearing,  
18 may ~~affirm~~, modify, or vacate the order or extend it until  
19 final determination.

20 ~~(12)~~(14) If the commissioner finds that any registrant  
21 or applicant for registration is no longer in existence or  
22 has ceased to do business as a broker-dealer, investment  
23 adviser, or salesman or is subject to an adjudication of  
24 mental incompetence or to the control of a committee,  
25 conservator, or guardian or cannot be located after

1 reasonable search, the commissioner may by order cancel the  
2 registration or application.

3 ~~(13)~~(15) The commissioner may, after suspending or  
4 revoking registration of any broker-dealer, salesman, or  
5 investment adviser under subsection (10), impose a fine not  
6 to exceed \$5,000 upon such broker-dealer, salesman, or  
7 investment adviser. The fine is in addition to all other  
8 penalties imposed by the laws of this state and must be  
9 collected by the commissioner in the name of the state of  
10 Montana and deposited in the general fund. Imposition of  
11 any fine under this subsection is an order from which an  
12 appeal may be taken pursuant to 30-10-308. If any  
13 broker-dealer, salesman, or investment adviser fails to pay  
14 a fine referred to in this subsection, the amount of the  
15 fine is a lien upon all of the assets and property of such  
16 broker-dealer, salesman, or investment adviser in this state  
17 and may be recovered by suit by the commissioner and  
18 deposited in the general fund. Failure of a broker-dealer,  
19 salesman, or investment adviser to pay a fine also  
20 constitutes a forfeiture of his right to do business in this  
21 state under parts 1 through 3 of this chapter."

22 Section 5. Section 30-10-204, MCA, is amended to read:

23 "30-10-204. Registration by coordination. (1) Any  
24 security for which a registration statement has been filed  
25 under the Securities Act of 1933 or any securities for which

1 filings have been made pursuant to regulation A or  
 2 regulation E, and amendments thereto, of the general rules  
 3 and regulations of the United States securities and exchange  
 4 commission, adopted pursuant to subsection (b) of section 3  
 5 of said Securities Act of 1933, in connection with the same  
 6 offering, may be registered by coordination. A registration  
 7 statement under this section shall contain the following  
 8 information and be accompanied by the following documents,  
 9 in addition to payment of the registration fee prescribed in  
 10 30-10-209:

11 (a) ~~three---copies~~ one copy of the prospectus or  
 12 offering circular and letter of notification filed under the  
 13 Securities Act of 1933 or the general rules and regulations  
 14 thereunder, together with all amendments thereto;

15 (b) the amount of securities to be offered in this  
 16 state;

17 (c) the states in which a registration statement or  
 18 similar document in connection with the offering has been or  
 19 is expected to be filed;

20 (d) any adverse order, judgment, or decree previously  
 21 entered in connection with the offering by any court or the  
 22 securities and exchange commission;

23 (e) if the commissioner by rule or otherwise requires,  
 24 a copy of the articles of incorporation and bylaws (or their  
 25 substantial equivalents) currently in effect, a copy of any

1 agreements with or among underwriters, a copy of any  
 2 indenture or other instrument governing the issuance of the  
 3 security to be registered, and a specimen or copy of the  
 4 security;

5 (f) if the commissioner requests, any other  
 6 information, or copies of any other documents, filed under  
 7 the Securities Act of 1933;

8 (g) an undertaking to forward promptly all amendments  
 9 to the federal registration statement or offering circular  
 10 and letter of notification, other than an amendment which  
 11 merely delays the effective date;

12 (h) a consent to service of process meeting the  
 13 requirements of 30-10-208; and

14 (i) such other information as the commissioner may  
 15 require.

16 (2) A registration statement by coordination under  
 17 this section automatically becomes effective at the moment  
 18 the federal registration statement or other filing becomes  
 19 effective if all the following conditions are satisfied:

20 (a) no stop order is in effect and no proceeding is  
 21 pending under 30-10-207;

22 (b) the registration statement has been on file with  
 23 the commissioner for at least 10 business days; and

24 (c) a statement of the maximum and minimum proposed  
 25 offering prices and the maximum underwriting discounts and

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commissions has been on file for 2 business days or such shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations.

(3) The registrant shall promptly notify the commissioner of the date and time when the federal registration statement or other filings became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(4) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment referred to in subsection (2) of this section, the commissioner may enter a stop denial order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with subsection (2) of this section, if he promptly notifies the registrant of the issuance of the order. If the registrant proves compliance with the requirements as to notice and posteffective amendment, the stop denial order is void as of the time of its entry. The

commissioner may by rule or otherwise waive either or both of the conditions specified in subsections (2)(b) and (2)(c) of this section. If the federal registration statement or other filing becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement or other filing is expected to become effective the commissioner shall promptly advise the registrant whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under 30-10-207; but this advice by the commissioner does not preclude the institution of such a proceeding at any time."

Section 6. Section 30-10-206, MCA, is amended to read:

"30-10-206. General provisions regarding registration of securities. (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under parts 1 through 3 of this chapter or a predecessor law within 5 3 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The commissioner may by rule or otherwise permit the omission of any item of information or

document from any registration statement.

(2) (a) The commissioner may require as a condition of registration by qualification or coordination:

(i) that any security issued within the past 3 years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and

(ii) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.

(b) The commissioner may determine the conditions of any escrow or impounding required hereunder, but he may not reject a depository solely because of location in another state.

(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered broker-dealer. Every registration shall remain effective for a period of 1 year unless it is revoked by the commissioner, terminated upon request of the registrant with the consent of the commissioner, or renewed under 30-10-209(1)(b); however, said registration shall be automatically suspended upon a

stop order or suspension proceedings being instituted by the securities and exchange commission relative to said securities and shall continue suspended so long as such proceedings are pending and until the registration or filing with the securities and exchange commission is effective. All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding.

(4) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which:

(a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940; or

(b) are being offered and sold directly by or for the account of the issuer.

(5) No securities registration statement may be withdrawn, whether or not such statement has become effective, without the express written consent of the

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1 commissioner."

2 Section 7. Section 30-10-207, MCA, is amended to read:

3 "30-10-207. Denial, suspension, and revocation of  
4 registration of securities. (1) The commissioner may issue  
5 an order denying effectiveness to, or suspending or revoking  
6 the effectiveness of, any registration statement if he finds  
7 that the order is in the public interest and that:

8 (a) the registration statement, as of its effective  
9 date or as of any earlier date in the case of an order  
10 denying effectiveness, is incomplete in any material respect  
11 or contains any statement which was, in the light of the  
12 circumstances under which it was made, false or misleading  
13 with respect to any material fact;

14 (b) any provision of parts 1 through 3 of this chapter  
15 or any rule, order, or condition lawfully imposed under  
16 parts 1 through 3 of this chapter has been willfully  
17 violated, in connection with the offering, by:

18 (i) the person filing the registration statement;

19 (ii) the issuer, any partner, officer, or director of  
20 the issuer, any person occupying a similar status or  
21 performing similar functions, or any person directly or  
22 indirectly controlling or controlled by the issuer, but only  
23 if the person filing the registration statement is directly  
24 or indirectly controlled by or acting for the issuer; or

25 (iii) any underwriter;

1 (c) the security registered or sought to be registered  
2 is the subject of a permanent or temporary injunction of any  
3 court of competent jurisdiction entered under any other  
4 federal or state law applicable to the offering, but:

5 (i) the commissioner may not institute a proceeding  
6 against an effective registration statement under this  
7 subsection (c) more than 1 year from the date of the  
8 injunction relied on; and

9 (ii) he may not enter an order under this subsection  
10 (c) on the basis of an injunction entered under any other  
11 state law unless that order or injunction was based on facts  
12 which would currently constitute a ground for an order under  
13 this section;

14 (d) the issuer's enterprise or method of business  
15 includes or would include activities which are illegal where  
16 performed;

17 (e) the offering has worked or tended to work a fraud  
18 upon purchasers or would so operate;

19 (f) when a security is sought to be registered by  
20 notification, it is not eligible for such registration;

21 (g) when a security is sought to be registered by  
22 coordination, there has been a failure to comply with the  
23 undertaking required by 30-10-204(1)(g);

24 (h) the applicant or registrant has failed to pay the  
25 proper registration fee, but the commissioner may enter only



1 a denial order under this subsection, and he shall vacate  
2 any such order when the deficiency has been corrected; or

3 (i) the offering has been or would be made with  
4 unreasonable amounts of underwriters' and sellers'  
5 discounts, commissions, or other compensation, or promoters'  
6 profits or participation, or unreasonable amounts or kinds  
7 of options.

8 (2) The commissioner may not enter a stop suspension  
9 or revocation order against an effective registration  
10 statement on the basis of a fact or transaction known to him  
11 when the registration statement became effective.

12 (3) Upon the entry of an order under subsection (1) of  
13 this section, the commissioner shall promptly notify the  
14 issuer of the securities and the applicant or registrant  
15 that an order has been entered and of the reasons therefor  
16 and that, if requested by the issuer or registrant within 15  
17 days after the receipt of the commissioner's notification,  
18 the matter will be set promptly down for hearing. If no  
19 hearing is requested within 15 days and none is ordered by  
20 the commissioner, the order will remain in effect until it  
21 is modified or vacated by the commissioner. If a hearing is  
22 requested or ordered, the commissioner, after notice of and  
23 opportunity for hearing, may affirm, modify, or vacate the  
24 order."

25 Section 8. Section 30-10-209, MCA, is amended to read:

1 "30-10-209. Fees. The following fees shall be paid in  
2 advance under the provisions of parts 1 through 3 of this  
3 chapter:

4 (1) (a) For the registration of securities by  
5 notification, coordination, or qualification, there shall be  
6 paid to the commissioner for the first year of registration  
7 a registration fee of \$200 for the first \$100,000 of initial  
8 issue or portion thereof in this state, based on offering  
9 price, plus 1/10 of 1% for any excess over \$100,000, with a  
10 maximum of \$1,000.

11 (b) Each year thereafter, a registration of securities  
12 may be renewed, prior to its termination date, for an  
13 additional year upon consent of the commissioner and payment  
14 of an additional registration fee to be computed at 1/10 of  
15 1% of the aggregate offering price of such securities which  
16 are to be offered in this state during that year, even  
17 though the maximum fee was paid the preceding year. In no  
18 event shall the additional registration fee be less than  
19 \$200 or more than \$1,000. The registration statement for  
20 such securities may be amended to increase the amount of  
21 securities to be offered.

22 (c) If a registrant sells securities in excess of the  
23 aggregate amount registered for sale in this state, the  
24 registrant may file an amendment to the registration  
25 statement to include the excess sales. If the registrant

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1 fails to file an amendment before the expiration date of the  
2 registration order, he shall pay a filing fee for the excess  
3 sales of three times the amount calculated in the manner  
4 specified in subsection (1)(b). Registration of the excess  
5 securities is effective retroactively to the date of the  
6 existing registration.

7 (2) (a) For registration of a broker-dealer or  
8 investment adviser, the fee shall be \$200 for original  
9 registration and \$200 for each annual renewal.

10 (b) For registration of a salesman, the fee shall be  
11 \$50 for original registration with each employer, \$50 for  
12 each annual renewal, and \$50 for each transfer.

13 (3) For certified copies of any documents filed with  
14 the commissioner, the fee shall be the cost to the  
15 department.

16 (4) For a request for an exemption under  
17 30-10-105(15), the fee shall be established by the  
18 commissioner by rule. For a request for any other exemption  
19 or an exception to the provisions of parts 1 through 3 of  
20 this chapter, the fee shall be \$50.

21 ~~{5}--For---waiver---of---the---residency---requirement---of~~  
22 ~~30-10-201{4},---the---fee---shall---be---\$50---for---each---original~~  
23 ~~registration.~~

24 {6}{5} All fees are considered fully earned when  
25 received. In the event of overpayment, only those amounts in

1 excess of \$10 may be refunded.

2 {7}{6} All fees, examination charges, and  
3 miscellaneous charges, except fines or penalties, collected  
4 by the commissioner pursuant to parts 1 through 3 of this  
5 chapter and the rules adopted hereunder must be deposited  
6 into the securities regulatory trust account, pursuant to  
7 30-10-115 through 30-10-118.

8 {8}{7} All fines and penalties collected by the  
9 commissioner pursuant to parts 1 through 3 of this chapter  
10 and the rules adopted hereunder must be deposited into the  
11 general fund."

12 Section 9. Section 30-10-301, MCA, is amended to read:

13 "30-10-301. Fraudulent and other prohibited practices.

14 (1) It is unlawful for any person, in connection with the  
15 offer, sale, or purchase of any security, directly or  
16 indirectly, in, into, or from this state, to:

17 (a) employ any device, scheme, or artifice to defraud;

18 (b) make any untrue statement of a material fact or  
19 omit to state a material fact necessary in order to make the  
20 statements made, in the light of the circumstances under  
21 which they are made, not misleading; or

22 (c) engage in any act, practice, or course of business  
23 which operates or would operate as a fraud or deceit upon  
24 any person.

25 (2) (a) It is unlawful for any person who receives,

1 directly or indirectly, any consideration from another  
 2 person primarily for advising the other person as to the  
 3 value of securities or their purchase or sale, whether  
 4 through the issuance of analysis or reports or otherwise,  
 5 to:

6 (a)(i) to employ any device, scheme, or artifice to  
 7 defraud the other person; or

8 (b)(ii) to engage in any act, practice, or course of  
 9 business which operates or would operate as a fraud or  
 10 deceit upon the other person; or

11 (iii) without disclosing to the client in writing  
 12 before the completion of the transaction the capacity in  
 13 which he is acting and obtaining the consent of the client  
 14 to the transaction:

15 (A) acting as principal for his own account, to  
 16 knowingly sell any security to or purchase any security from  
 17 a client; or

18 (B) acting as agent for a person other than such  
 19 client, to knowingly effect the sale or purchase of any  
 20 security for the account of such client.

21 (b) The prohibitions of subsection (2)(a)(iii) do not  
 22 apply to any transaction with a customer of a broker-dealer  
 23 if the broker-dealer is not being compensated for rendering  
 24 investment advice in relation to such transaction.

25 (3) In the solicitation of advisory clients, it is

1 unlawful for a person to:

2 (a) make a false statement of a material fact; or

3 (b) omit a material fact necessary to make a statement  
 4 not misleading in light of the circumstances under which it  
 5 is made.

6 (3)(4) It Except as permitted by rule or order of the  
 7 commissioner, it is unlawful for any investment adviser to  
 8 enter into, extend, or renew any investment advisory  
 9 contract unless it provides in writing that:

10 (a) the investment adviser shall not be compensated on  
 11 the basis of a share of capital gains upon or capital  
 12 appreciation of the funds or any portion of the funds of the  
 13 client;

14 (b) no assignment of the contract may be made by the  
 15 investment adviser without the consent of the other party to  
 16 the contract; and

17 (c) the investment adviser, if a partnership, shall  
 18 notify the other party to the contract of any change in the  
 19 membership of the partnership within a reasonable time after  
 20 the change.

21 (5) Subsection (4)(a) does not prohibit an investment  
 22 advisory contract which provides for compensation based upon  
 23 the total value of a fund averaged over a definite period or  
 24 as of definite dates or taken as of a definite date.  
 25 "Assignment", as used in subsection (4)(b), includes any

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1 direct or indirect transfer or hypothecation of an  
 2 investment advisory contract by the assignor or of a  
 3 controlling block of the assignor's outstanding voting  
 4 securities by a security holder of the assignor; but if the  
 5 investment adviser is a partnership, no assignment of an  
 6 investment advisory contract is considered to result from  
 7 the death or withdrawal of a minority of the members of the  
 8 investment adviser having only a minority interest in the  
 9 business of the investment adviser or from the admission to  
 10 the investment adviser of one or more members who, after  
 11 admission, will be only a minority of the members and will  
 12 have only a minority interest in the business.

13 (6) It is unlawful for an investment adviser to take  
 14 or have custody of any securities or funds of any client if:

15 (a) the commissioner by rule prohibits such custody;  
 16 or

17 (b) in the absence of rule, the investment adviser  
 18 fails to notify the commissioner that he has or may have  
 19 such custody."

20 Section 10. Section 30-10-304, MCA, is amended to  
 21 read:

22 "30-10-304. Investigations and subpoenas. (1) The  
 23 commissioner in his discretion may:

24 (a) make such public or private investigations or  
 25 examinations within or without this state as he deems

1 necessary to determine whether any registration should be  
 2 granted, denied, or revoked or whether any person has  
 3 violated or is about to violate any provision of parts 1  
 4 through 3 of this chapter or any rule or order hereunder or  
 5 to aid in the enforcement of parts 1 through 3 of this  
 6 chapter or in the prescribing of rules and forms hereunder;

7 (b) require or permit any person to file a statement  
 8 in writing, under oath or otherwise as the commissioner may  
 9 determine, as to all the facts and circumstances concerning  
 10 the matter to be investigated; and

11 (c) publish information concerning any violation of  
 12 parts 1 through 3 of this chapter or any rule or order  
 13 hereunder.

14 (2) (a) For the purpose of any investigation or  
 15 proceeding under parts 1 through 3 of this chapter, the  
 16 commissioner or any officer designated by him may administer  
 17 oaths and affirmations, subpoena witnesses, compel their  
 18 attendance, take evidence, and require the production of any  
 19 books, papers, correspondence, memoranda, agreements, or  
 20 other documents or records which the commissioner deems  
 21 relevant or material to the inquiry.

22 (b) The commissioner may issue and apply to enforce  
 23 subpoenas in this state at the request of a securities  
 24 agency or administrator of another state if the activities  
 25 constituting an alleged violation for which the information

1 is sought would be a violation of the Securities Act of  
 2 Montana if the activities had occurred in this state.

3 (3) In case of contumacy by or refusal to obey a  
 4 subpoena issued to any person, any court of competent  
 5 jurisdiction, upon application by the commissioner, may  
 6 issue to that person an order requiring him to appear before  
 7 the commissioner or the officer designated by him, there to  
 8 produce documentary evidence if so ordered or to give  
 9 evidence touching the matter under investigation or in  
 10 question. Any failure to obey the order of the court may be  
 11 punished by the court as a contempt of court.

12 (4) No person is excused from attending and testifying  
 13 or from producing any document or record before the  
 14 commissioner or in obedience to the subpoena of the  
 15 commissioner or any officer designated by him, or in any  
 16 proceeding instituted by the commissioner, on the ground  
 17 that the testimony or evidence (documentary or otherwise)  
 18 required of him may tend to incriminate him or subject him  
 19 to a penalty or forfeiture; but no compelled testimony or  
 20 evidence or any information directly or indirectly derived  
 21 from such testimony or evidence may be used against the  
 22 witness in any criminal case. Nothing in this section  
 23 prohibits the commissioner from granting immunity from  
 24 prosecution for or on account of any transaction, matter, or  
 25 thing concerning which a witness is compelled to testify if

1 the commissioner determines, in his sole discretion, that  
 2 the ends of justice would be served thereby. Immunity may  
 3 not extend to prosecution or punishment for false statements  
 4 given pursuant to the subpoena."

5 Section 11. Section 30-10-307, MCA, is amended to  
 6 read:

7 "30-10-307. Civil liabilities. (1) Any person who  
 8 offers or sells a security in violation of ~~any provisions~~ of  
 9 30-10-202 through ~~30-10-205~~ or offers or sells a security by  
 10 means of fraud or misrepresentation is liable to the person  
 11 buying the security from him, who may sue either at law or  
 12 in equity to recover the consideration paid for the  
 13 security, together with interest at 10% per annum from the  
 14 date of payment, costs, and reasonable attorneys' fees, less  
 15 the amount of any income received on the security, upon the  
 16 tender of the security, or for damages if he no longer owns  
 17 the security. Damages are the amount that would be  
 18 recoverable upon a tender less:

19 (a) the value of the security when the buyer disposed  
 20 of it; and

21 (b) interest at 10% per annum from the date of  
 22 disposition.

23 (2) Every person who directly or indirectly controls a  
 24 seller liable under subsection (1), every partner, officer,  
 25 or director (or person occupying a similar status or

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performing similar functions) or employee of such a seller, and every broker-dealer or salesman who participates or materially aids in the sale is liable jointly and severally with and to the same extent as the seller if the nonseller knew, or in the exercise of reasonable care could have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution among the several persons so liable.

(3) Any tender specified in this section may be made at any time before entry of judgment. A cause of action under this statute survives the death of any person who might have been a plaintiff or a defendant. No person may sue under this section:

(a) if the buyer has received a written offer, at a time when he owned the security, to refund the consideration paid, together with interest at 10% per annum from the date of payment, less the amount of any income received on the security and he failed to accept the offer within 30 days of its receipt; or

(b) if the buyer has received a written offer at a time when he did not own the security in the amount that would be recoverable under subsection (1) upon a tender less:

(i) the value of the security when the buyer disposed of it; and

(ii) interest at 10% per annum from the date of disposition.

(4) No person who has made or engaged in the performance of any contract in violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of parts 1 through 3 of this chapter or any rule or order hereunder is void as against public policy and in the public interest."

Section 12. Section 90-8-304, MCA, is amended to read:

"90-8-304. Application of securities law. In lieu of registration under Title 30, chapter 10, a certified Montana capital company may file all disclosure documents, along with a consent to service of process, with the state securities commissioner. The commissioner may not charge a fee for such filing or deposit."

NEW SECTION. Section 13. Coordination instruction. If \_\_Bill No. \_\_ [LC 1053] is not passed and approved, section 4 of this act, amending 30-10-201, is amended so that 30-10-201(5) and (6) read as follows:

"(5) The application shall contain whatever

1 information the commissioner requires. No registration  
2 application of a broker-dealer, salesman, or investment  
3 adviser may be withdrawn before the commissioner approves or  
4 denies such registration, without the express written  
5 consent of the commissioner.

6 (6) When the registration requirements are ~~complied~~  
7 ~~with met~~, the commissioner shall ~~approve--the--registration--~~  
8 ~~make the registration effective. No effective registration~~  
9 ~~of a broker-dealer, salesman, or investment adviser may be~~  
10 ~~withdrawn without the express written consent of the~~  
11 ~~commissioner."~~

12 NEW SECTION. Section 14. Extension of authority. Any  
13 existing authority of the securities commissioner to make  
14 rules on the subject of the provisions of this act is  
15 extended to the provisions of this act.

16 NEW SECTION. Section 15. Effective date. This act is  
17 effective on passage and approval.

-End-